

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**DAVE J KRUEGER**  
Claimant

**LOWE'S HOME CENTERS LLC**  
Employer

**APPEAL 17A-UI-09692-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/12/17**  
**Claimant: Appellant (1)**

---

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Dave J. Krueger (claimant) filed an appeal from the September 13, 2017, reference 03, unemployment insurance decision that denied benefits based upon the determination Lowe's Home Centers, LLC (employer) discharged him for violation of a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on October 6, 2017. The claimant participated personally and was represented by Attorney Benjamin Roth. The employer participated through Human Resource Manager Emrah Odobasic. The employer's Exhibit 1 was received. During the hearing, the employer's witness testified from a document that had not been submitted prior to the hearing. The claimant objected as the document had not been provided before the hearing per the appeal notice instructions. The objection was overruled.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Facilities Services Associate beginning on March 2, 2013, and was separated from employment on August 18, 2017, when he was discharged. The employer has a policy prohibiting employees from working "off the clock." (Exhibit 1, page 5.) It also has employees sign off on a policy stating, "WORKING 'OFF-THE-CLOCK' BY OVERTIME ELIGIBLE AND COMMISSIONED STAFF IS STRICTLY FORBIDDEN AND COULD RESULT IN TERMINATION OF EMPLOYMENT FOR THOSE AT FAULT." (Exhibit 1, page 1.) The claimant received and acknowledged these policies.

The claimant returned from a work-related injury in March 2017. Human Resource Manager Emrah Odobasic and the claimant met to discuss his ongoing restrictions. The restrictions involved the claimant's ability to lift and climb ladders. The claimant was also limited in working 8-hour days for up to 40-hours a week but did not have any restrictions related to break times.

On August 2, 2017, Assistant Manager Scott June noticed the claimant clock out for his break, but then return to work. He reported the incident to Human Resources and an investigation began. The employer reviewed the claimant's time records and video footage of his entrance and exit from the break room. On numerous occasions between July 24 and August 7, 2017, the claimant would clock out for break, return to work, and then clock back in from break after 30 minutes. Shortly thereafter, he would go to the break room and take his break, which would exceed the 30 minutes of unpaid time he had reported by up to 30 minutes.

On August 15, 2017, during the ongoing investigation, the claimant clocked out at 1:05 p.m. and then returned to work. He clocked back in at 1:35 p.m. indicating his break had ended. He then entered the break room at 1:38 p.m. and resumed work at 2:35 p.m. That afternoon, the employer notified the claimant of the investigation and interviewed him. On August 18, 2017, the claimant was discharged for working off the clock and time card theft. The claimant had not received any prior warnings for similar conduct.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa Administrative Code rule 871-24.32(1)a provides:

“Misconduct” is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be “substantial” to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events.

Misreporting time and time card fraud when it results in an employee being paid for time for which he or she was not working is theft from the employer. Theft from an employer is generally disqualifying misconduct. *Ringland Johnson, Inc. v. Hunecke*, 585 N.W.2d 269, 272 (Iowa 1998). In *Ringland*, the Court found a single attempted theft to be misconduct as a matter of law. The employer has an interest in having employees' time properly reported and only paying employees for time which they work or perform services for the employer. The claimant's conduct as described, which he acknowledged, and in knowing violation of the employer's policy, indicates a deliberate disregard of the employer's interest. The claimant's argument that he was taking the additional time due to his restrictions is not persuasive as he did not have any restrictions related to break times and it still does not explain why he would falsify when he took his breaks. The claimant engaged in disqualifying misconduct even without previous warning. Benefits are denied.

**DECISION:**

The September 13, 2017, reference 03, unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

---

Stephanie R. Callahan  
Administrative Law Judge

---

Decision Dated and Mailed

src/scn