

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**REBECCA L KIME**

Claimant

**CASEY'S MARKETING CO**

Employer

**APPEAL 17A-UI-03677-CL**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/05/17**

**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the March 23, 2017, (reference 01) unemployment insurance decision that denied benefits based upon a discharge for misconduct. The parties were properly notified about the hearing. A hearing was held in Waterloo, Iowa on April 25, 2017. Claimant participated. Employer participated through area supervisor Connie Smith. Employer's Exhibits 1 through 6 were received. Claimant's Exhibit A was received.

**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: Claimant began working for employer on February 15, 2010. Claimant last worked as a full-time store manager. Claimant was separated from employment on February 14, 2017, when she was terminated.

Employees clock in on the register using their four digit code. Employer has a policy stating sharing time clock passwords and clocking in and out for another employee is strictly prohibited. Employer also has a policy stating that an employee who fails to accurately report all minutes/hour worked through the electronic time clock may be subject to corrective action. Claimant was aware of the policies.

On January 18, 2017, claimant was scheduled to work at 4:00 a.m. Claimant received a final, written warning for attendance earlier in January. Claimant called doughnut maker Chris Kauffman to inform him she was running late. Kauffman told claimant he was going to clock her in because she was going to be terminated if she was tardy. Claimant told Kauffman he was not supposed to clock her in and it was against company policy. Kauffman clocked claimant in before she arrived to the store. When claimant arrived, she discussed the issue with Kauffman. However, claimant did not report the incident to area supervisor Connie Smith because she did not want to get Kauffman in trouble.

On February 4, 2017, Smith was auditing payroll by comparing clock-in times with video surveillance footage. Smith noticed that claimant's clock-in time for January 18 was earlier than

the time she arrived according to video surveillance. Smith observed Kauffman receive a phone call and standing near the register around the same time claimant was clocked in. Smith informed her supervisor of the issue who instructed her that claimant's actions were a terminable offense.

On February 14, 2017, Smith returned to the store at which claimant worked. Smith played the video surveillance for claimant. Smith asked claimant what was going on in the video surveillance. Claimant did not say anything. Smith stated that she believed the video showed a co-worker was clocking claimant in. Claimant did not deny the conduct. Smith terminated claimant's employment.

Claimant had several disciplinary warnings regarding being tardy but had never been warned for falsifying time records or asking another employee to clock her in.

### **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.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* 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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, a subordinate employee falsified claimant's time records when he clocked claimant in for work when she was not present. Claimant knew about the conduct and did nothing to discipline the employee or correct the time records. As a store manager, claimant set an example for other employees including the subordinate who altered claimant's time records. Claimant's conduct was in deliberate disregard of employer's financial interests and constitutes misconduct even without prior warning.

**DECISION:**

The March 23, 2017, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant is deemed eligible.

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Christine A. Louis  
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Decision Dated and Mailed

cal/rvs