

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**THERESA L GLENN**  
Claimant

**APPEAL NO. 11A-UI-07774-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMES COMMUNITY SCHOOL DIST**  
Employer

**OC: 05/15/11  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated June 7, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 11, 2011. Claimant participated. Employer participated by Carol Hundertmark, payroll coordinator; Gerry Peters, director of facilities; and Dan DeYoung, head custodian high school. The record consists of the testimony of Carol Hundertmark; the testimony of Gerry Peters; the testimony of Dan De Young; and the testimony of Theresa Glenn.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a public school district in the state of Iowa. The claimant was hired on March 22, 2010, as a full-time pool custodian for the high school. The claimant's last day of work was May 16, 2011. She was terminated on May 16, 2011.

The incidents that led to the claimant's termination occurred on May 12, 2011, and May 13, 2011. The claimant was observed on videotape coming to work at 5:30 a.m. on May 12, 2011. She wrote down 5:00 a.m. on her timesheet. On May 13, 2011, the claimant came to work at 6:00 a.m. and wrote down 5:00 a.m. on her timesheet. The employer considered this to be falsifying a timesheet and theft of time. The claimant is paid hourly.

The claimant had stayed over her scheduled time to leave on several occasions and had asked Dan DeYoung what she should do about the time. The claimant thought Mr. DeYoung told her to either come in later or leave early and to write her regular start time on her time sheet. Mr. DeYoung thought there was a onetime agreement for the claimant to leave early on Friday, May 13, 2011, as a way of recouping her time.

**REASONING AND CONCLUSIONS OF LAW:**

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.

871 IAC 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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Honesty is a fundamental duty owed by all employees to an employer. An employer can reasonably expect that an employee will accurately report time on time cards. The employer has the burden of proof to show misconduct.

In this case, there appears to have been an honest misunderstanding between the claimant and the employer on how she was to recoup extra time worked at the end of her shift on several occasions. The claimant did not come to work at the time she recorded on her time sheets on May 12, 2011, and May 13, 2011. The claimant credibly testified that she thought Dan DeYoung had told her that she could leave early or come late as a way of making up time she

had to stay beyond the end of some of her shifts. Mr. DeYoung thought it was a onetime agreement to leave early on May 13, 2011. The claimant may have used poor judgment by coming in late, especially since her job was to check the pool chemicals at the start of her shift. There is insufficient evidence, however, for the administrative law judge to conclude that the claimant intended to defraud the employer and claim pay for time not worked. The claimant and Mr. DeYoung simply had different understandings of their agreement on how extra time should be recouped by the claimant. The claimant's actions do not rise to the level of wanton disregard of the employer's interests. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated June 7, 2011, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs