

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ALEXANDER M FLEMING**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 19A-UI-09236-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/27/19**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant, Alexander M. Fleming, filed an appeal from the November 18, 2019 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 17, 2019. The claimant participated personally. The employer, Hy-Vee Inc., participated through Trenton Kilpatrick, hearing representative with Corporate Cost Control. Katie Callahan, Travis Wirth, and Jade Pint testified. Kelly Burns also attended.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**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 part-time as a non-certified pharmacy technician/delivery driver and was separated from employment on October 25, 2019, when he was discharged.

The claimant was trained on the employer’s rules and procedures at the time of hire, including timekeeping. Usually the claimant would clock in and out on the premises. However, if he needed to edit his timecard for any reason, he could notify his manager, Ms. Callahan, who had authorization, or fill out a time card edit form located in his department.

On September 10, 2019, the claimant informed Ms. Callahan that he planned to attend doctor’s appointments every other week. She approved the request to go to the appointments during the day and asked the claimant to let her know so she could edit his timecards. The claimant interpreted the conversation to mean she would assume he attended appointments every other week for an hour and make the appropriate edits on his timecard, without him notifying her of

the appointments or requesting the edits. The claimant stated he also did not check his paycheck or timecards for accuracy to see if she was deducting an hour to reflect he was at his appointments. Consequently, between September 10 and October 22, 2019, the claimant did attend doctor's appointments, at least two, and did not notify Ms. Callahan of the appointments or request an edit. As a result, he was paid wages when not working and attending his personal doctor's appointments.

The employer learned of the claimant's appointments on October 22, 2019. While on deliveries that day, he went to a doctor's appointment, unbeknownst to the employer. While at the doctor's office, he experienced a medical episode which prevented him from returning to work. The doctor's office called the employer so they could retrieve the employer van which contained undelivered prescriptions. The employer then met with the claimant on October 26, 2019 and while discussing the incident, learned he had been attending doctors' appointments without completing a time edit form or requesting an edit from Ms. Callahan. The employer construed the claimant's conduct to be time theft and discharged him.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged for disqualifying 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).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

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.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

Honesty is a reasonable, commonly accepted duty owed to the employer. Reporting time on one's timecard when one is 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.

In the case at hand, the claimant requested to attend personal doctor's appointments during his regularly scheduled shifts. His manager agreed to letting the claimant schedule appointments during his shift and asked the claimant let her know when he did so she could make the appropriate time card edits. Reasonably, Ms. Callahan would have had no way to know what dates and times he went unless he provided that information to her. He could have said "I went to an appointment for an hour yesterday. Please edit my time card." He could have provided her proof of his appointments by way of appointment card so she could notate the appropriate deductions. He could have made the request himself by way of the edit time form. He also could have verified on his paystub that the deductions were being made if he assumed she would know when to make the deductions. The administrative law judge did not find the claimant's assumption that his manager would know when and how much time to take off and just take care of it without any communication to be reasonable or credible.

Rather, the claimant attended multiple appointments while clocked in and never told his employer. This all came to the employer's attention only because on October 22, 2019 the claimant was unable to return to the employer after a doctor's appointment and the employer didn't know the claimant had even gone that day to an appointment. The claimant was not truthful in his timekeeping when he did not edit his timecards or request edits by his manager. Consequently, he was paid for time not actually worked. This constitutes theft of time. The administrative law judge is persuaded the claimant knew or should have known his conduct was contrary to the best interests of the employer. Therefore, based on the evidence presented, the claimant was discharged for misconduct, even without prior warning. Benefits are denied.

**DECISION:**

The November 18, 2019 (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 he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Decision Dated and Mailed

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