

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEVEN CARUSO**  
Claimant

**APPEAL NO: 17A-UI-02696-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QWEST CORPORATION**  
Employer

**OC: 01/29/17  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 1, 2017, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 4, 2017. The claimant participated in the hearing with Network Technician Joe Wilcoxon and Customer Data Technician/Union Representative Dan Buller. Rob Vinson, Supervisor of Regional Operations and Leslie Buhler, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibits 1 through 5 were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time network technician for Century Link from April 11, 2011 to February 3, 2017. He was discharged for theft of time.

In October 2016, Supervisor of Regional Operations Rob Vinson received a report from another employee that the claimant was driving toward his house and closed off his last ticket at his residence instead of at his last call. Over approximately the next two months Mr. Vinson investigated the claimant's time sheets which was a time consuming task. Employees submit their time sheets at the end of each day and it shows their start and end times either through a dispatch system or a web based system. The claimant started and ended his day at his house. Typically, when he got home he would close out his last ticket, code his time and close out his time report. Mr. Vinson approves the time sheets the next day or the over the next couple days and then sends it to payroll data base which calculates hours, pay, and overtime.

Mr. Vinson began by reviewing the claimant's time sheets for September 26 through October 20, 2016. On September 26, 2016, the claimant's GPS was activated at 7:32 a.m. and ended at 4:52 p.m. for a total of nine hours and 22 minutes. The claimant requested 10 hours and 30 minutes on his time sheet. On September 28, 2016, the GPS was activated at 7:19 a.m.

and ended at 6:39 p.m. for a total of 11 hours and 20 minutes. The claimant requested 12 hours and 45 minutes on his time sheet. On October 3, 2016, the GPS was activated at 7:38 a.m. and ended at 6:05 p.m. for a total of eight hours and 27 minutes. The claimant requested 10 hours on his time sheet. On October 4, 2016, the GPS was activated at 7:41 a.m. and ended at 4:18 p.m. for a total of eight hours and 37 minutes. The claimant requested nine hours and 40 minutes on his time sheet. On October 5, 2016, the GPS was activated at 7:37 a.m. and ended at 4:36 p.m. for a total of eight hours and 59 minutes. The claimant requested 10 hours on his time sheet. On October 10, 2016, the GPS was activated at 7:42 a.m. and ended at 6:23 p.m. for a total of nine hours and 41 minutes. The claimant requested 13 hours on his time sheet. On October 11, 2016, the GPS was activated at 7:04 a.m. and ended at 5:22 p.m. for a total of 10 hours and 18 minutes. The claimant requested 11 hours and 45 minutes on his time sheet. On October 12, 2016, the GPS was activated at 7:54 a.m. and ended at 5:32 p.m. for a total of nine hours and 38 minutes. The claimant requested 11 hours and 30 minutes on his time sheet. On October 13, 2016, the GPS was activated at 7:07 a.m. and ended at 3:45 p.m. for a total of eight hours and 48 minutes. The claimant requested nine hours and 45 minutes on his time sheet. On October 19, 2016, the GPS was activated at 7:07 a.m. and ended at 5:23 p.m. for a total of 10 hours and 16 minutes. The claimant requested 11 hours on his time sheet. On October 20, 2016, the GPS was activated at 7:11 a.m. and ended at 5:06 p.m. for a total of nine hours and 55 minutes. The claimant requested 10 hours and 30 minutes on his time sheet.

After gathering the time reporting information, Mr. Vinson met with the claimant and his union representative Dan Buller on December 15, 2016. The claimant was given an opportunity to explain the discrepancies in his time sheet, but could not provide reasonable explanations for the incorrect times he listed. He stated he did not have any reason for the difference between when the GPS ended and the time he coded as extra time. After the meeting Mr. Vinson met with his supervisors and the employer decided to look at a different two week period to see if the first group of the claimant's time sheet comparisons was an anomaly. The claimant was allowed to continue working.

Mr. Vinson next examined the period of time from December 2 through December 15, 2016. On December 2, 2016, the GPS started at 8:06 a.m. and ended at 3:17 p.m. for a total of seven hours and 11 minutes. The claimant requested eight hours on his time sheet. On December 5, 2016, the GPS started at 7:42 a.m. and ended at 2:51 p.m. for a total of seven hours and 11 minutes. The claimant requested eight hours on his time sheet. On December 6, 2016, the GPS started at 8:38 a.m. and ended at 3:10 p.m. for a total of six hours and 42 minutes. The claimant requested eight hours on his time sheet. On December 7, 2016, the GPS started at 7:49 a.m. and ended at 3:57 p.m. for a total of eight hour and eight minutes. The claimant requested nine hours and 30 minutes on his time sheet. On December 8, 2016, the GPS started at 8:07 a.m. and ended at 4:24 p.m. for a total of eight hours and 17 minutes. The claimant requested 10 hours and 15 minutes on his time sheet. On December 9, 2016, the GPS started at 8:52 a.m. and ended at 3:12 p.m. for a total of seven hours and 12 minutes. The claimant requested eight hours on his time sheet. On December 12, 2016, the GPS started at 7:56 a.m. and ended at 4:52 p.m. for a total of eight hours and 56 minutes. The claimant requested 10 hours and 15 minutes on his time sheet. On December 13, 2016, the GPS started at 8:31 a.m. and ended at 3:31 p.m. for a total of seven hours. The claimant requested nine hours on his time sheet. On December 14, 2016, the GPS started at 8:17 a.m. and ended at 3:38 p.m. for a total of seven hours and 21 minutes. The claimant requested eight hours and 15 minutes on his time sheet. On December 15, 2016, the GPS started at 7:48 a.m. and ended at 4:11 p.m. for a total of eight hours and 23 minutes. The claimant requested nine hours on his time sheet.

Mr. Vinson met with the claimant and Mr. Buller again January 18, 2017, and asked him to explain both of the periods of time in question (Employer's Exhibits 1 and 2). The claimant still could not offer an adequate explanation of why his time worked differed from the time he recorded as working. The employer allowed the claimant to return to work while it made a determination of what disciplinary action to take against the claimant. Mr. Vinson wanted to review the data and the claimant's answers and did not want to make a "rash decision." On February 3, 2017, the employer met with the claimant and gave him a letter of termination (Employer's Exhibit 4) for violating its code of conduct policy by stealing time on his time sheet (Employer's Exhibit 3).

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

While the claimant maintains he must have made an error in coding his end times, his explanation is not satisfactory or persuasive. In the two periods of time examined by the employer, the claimant sought payment for 27 hours of time when he was not actually working. This was a pattern of behavior rather than an anomaly and the claimant's actions constitute a theft of time from the employer.

That said, however, the employer became aware there was a potential problem with the claimant's time sheets in October 2016 but did not complete its initial investigation until December 15, 2016. Even accounting for the fact that gathering the time sheet information was time consuming, the employer knew the claimant falsified his time sheet by December 15, 2016, at the latest. Despite that information it allowed the claimant to continue working and held a second meeting with him January 18, 2017. By that date, it had accumulated even more evidence of the claimant stealing time, but again the employer allowed the claimant to continue working until February 3, 2017, at which time it terminated his employment. Under these circumstances, the administrative law judge cannot find that the claimant's action were a current act of misconduct as the employer failed to act on the claimant's theft of time in a timely manner. Consequently, benefits must be allowed.

**DECISION:**

The March 1, 2017, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/rvs