

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**GRETCHEN LEHR**  
Claimant

**HILLCREST FAMILY SERVICES**  
Employer

**APPEAL 21A-UI-05561-ED-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/20/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the February 15, 2021 reference 01) unemployment insurance decision that denied benefits based upon claimant's discharge from employment on December 18, 2020 for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on April 26, 2021. The claimant, Gretchen Lehr, participated personally. The employer, Hillcrest Family Services, participated through witness Ankita Jani. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a mental health tech III from November 5, 2001 until December 18, 2020 when her employment was terminated for falsifying time cards and theft of time. On December 13, 2020 the employer discovered that the claimant had clocked in to work at 7:05 a.m. but had not actually arrived until 7:14 a.m. The employer reviewed the security camera and the clock in times for claimant going back to November 2020. They found repeated instances where the claimant clocked in prior to being at work.

Date	Time Clocked In	Time Arrived
November 9, 2020	7:05 a.m.	7:10 a.m.
November 10, 2020	7:05 a.m.	7:16 a.m.
November 13, 2020	7:04 a.m.	7:11 a.m.
November 19, 2020	7:01 a.m.	7:07 a.m.
November 28, 2020	7:01 a.m.	7:07 a.m.
November 29, 2020	7:01 a.m.	7:09 a.m.
December 4, 2020	7:01 a.m.	7:08 a.m.

December 7, 2020	7:02 a.m.	7:09 a.m.
December 8, 2020	7:01 a.m.	7:08 a.m.
December 9, 2020	7:04 a.m.	7:12 a.m.
December 13, 2020	7:05 a.m.	7:14 a.m.

### REASONING AND CONCLUSIONS OF LAW:

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

As a preliminary matter, the administrative law judge finds that the claimant did not quit. Claimant was discharged from employment.

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(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

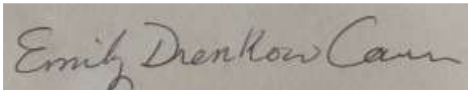
The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *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).

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 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).

Claimant habitually and consistently clocked in before arriving at work. This is substantial enough to warrant denial of benefits. Claimant's explanation was essentially she was simply careless or negligent. Even so such repeated and recurrent mistakes rise of the level of job disqualifying misconduct. Claimant engaged in job-related misconduct when she repeatedly clocked in before arriving at work. The employer has met its burden of proof establishing a current act of disqualifying job-related misconduct. As such, benefits are denied.

**DECISION:**

The February 15, 2021 unemployment insurance decision is affirmed. Claimant was discharged from employment for a current act of job-related misconduct. Benefits are denied.



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Emily Drenkow Carr  
Administrative Law Judge

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May 03, 2021  
Decision Dated and Mailed

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