IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU

MICHAEL A WILKINS Claimant **HY-VEE INC** Employer	**APPEAL 24A-UI-03479-PT-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 03/03/24** **Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Michael Wilkins, filed an appeal from a decision of a representative dated March 27, 2024, (reference 01) that held the claimant ineligible for unemployment insurance benefits after a separation from employment. After due notice, a telephone hearing was held on April 23, 2024. The claimant participated personally. The employer, Hy-Vee Inc., was represented by Hearing Representative Marlene Sartin and participated through Vice President Dan Strait and Human Resources Generalist Jacqueline Noll. The administrative law judge took official notice of the administrative record.

ISSUE:

Did the employer discharge the claimant for disqualifying, job related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant began working as a full-time lead point of sales technician for Hy-Vee Inc. on September 18, 2017. The claimant was separated from employment on March 4, 2024, when he was discharged.

As a lead point of sales technician, the claimant worked remotely from home and was responsible for providing technical support to Hy-Vee grocery stores in his region by responding to work orders and troubleshooting problems that arose with the stores' point of sales equipment and software. The claimant would first try to resolve technical issues over the phone, but if he could not, he would travel, sometimes hundreds of miles, to troubleshoot the problem in-person.

For the first six years of the claimant's employment, the employer's timekeeping policy simply required employees to manually enter the number of hours worked each day prior to submitting their timesheets. However, in December 2023, the employer implemented a new timekeeping system, which required all employees to clock-into work on an app on their work phone and to clock-out on the app at the end of the day. Although the employer sent all employees a video explaining how to use the app, the claimant struggled with the employer's new timekeeping system.

In mid-January 2024, the claimant's supervisor noticed that the claimant had not been reporting his work time by logging into the app at the start of the day and logging out at the end of the day. The claimant's supervisor called and explained the issue to the claimant and told the claimant that moving forward he needed to clock-in on the app at the start of the day and clock-out at the end of the day. While the claimant's supervisor reviewed the new timekeeping system with the claimant, he did not issue the claimant any workplace discipline for his mistake.

In late-February 2024, the employer audited all remote employees' timesheets from the previous week. When the employer reviewed the claimant's timesheet, it noticed that the claimant had manually entered his time to reflect having worked eight hours per day, rather than clocking-in and out of the app as required by the policy. For this reason, the employer reviewed the claimant's timesheets for the two preceding weeks, which had also been manually entered. The employer then cross-referenced the claimant's manually reported start and stop times with his vehicle's GPS activity and discovered that the times often did not match. For instance, on several days, the claimant reported starting work at 8:00 a.m. but his vehicle did not move for several hours and on other days the claimant reported stopping at 4:00 p.m. but the claimant was clearly still driving home from work assignments.

On February 29, 2024, the employer called the claimant into a meeting and questioned the claimant about the discrepancies in his timesheets. The claimant explained that the new timekeeping system confused him, so he just manually entered the same start and stop times each day as he always had. When asked why his vehicle's GPS did not match his reported start and stop times, the claimant explained that he often begins his day by making phone calls to stores that sent in work orders to see if he could resolve their issues remotely. If the claimant was not able to resolve their issue over the phone, he would then drive to the store. Finally, the claimant explained that he often reported that he was done working even when he was still driving home from assignments because he did not want to go over 40 hours in the work week and receive overtime that had not been previously authorized.

After interviewing the claimant, the employer reviewed the phone records from the claimant's work phone, which showed very little phone activity. For instance, during one of the weeks the employer reviewed, the claimant's phone records showed only six minutes of phone activity for the entire week. The employer determined that the claimant's phone records did not support the claimant's explanation for the discrepancy between his timesheet and his GPS activity. On March 4, 2024, the employer called and informed the claimant that his employment was being terminated effective immediately due to misreporting his time in violation of the employer's timekeeping policy.

At the hearing, the claimant denied ever intentionally misreporting his work time. The claimant explained that he manually entered his time because the new timekeeping system confused him and he did not want to go over 40 hours and accidentally received unauthorized overtime. As for his cellphone records, the claimant explained that since he was hired in September 2017, the claimant has used his own personal cell phone for 99% of his work calls. The claimant testified that he only uses his work cell phone to enter his time in the timekeeping app. Finally, the claimant credibly testified that he was not aware of any rule, and was never told, that he was required to use his work cell phone to make work-related phone calls.

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 section 96.5(2)a and (d) provide:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
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> 2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
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> a. The disqualification shall continue 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.
> …
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> d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:
> …
>
> (2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

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.

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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the

employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. 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). 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 Bd.*, 616 N.W.2d 661 (Iowa 2000). A failure in job performance is not misconduct unless it is intentional. *Huntoon*, supra; *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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*.

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the claimant's version of events to be generally more credible than the employer's version of those events, as the claimant's testimony was clear and detailed and his explanation for the discrepancy between his timesheet and GPS activity was consistent with other believable evidence. The administrative law judge concludes the claimant did not intentionally violate the employer's timekeeping policy.

In this case, the employer discharged the claimant because the employer believed the claimant had intentionally misreported his time to reflect time that he did not actually work. While the employer performed an investigation and pointed to discrepancies between the claimant's GPS activity and reported start-and-stop times as evidence for this conclusion, the claimant credibly addressed this apparent discrepancy by explaining that he always started his day making phone calls to try to troubleshoot problems before driving to the stores. Moreover, the evidence reflects that the claimant often clocked-out while still working to avoid receiving overtime, which indicates that the claimant was attempting to steal time from the employer. The employer has the burden of proof. The employer has failed to demonstrate that the claimant intentionally misreported his time to reflect time that he did not actually work

Finally, while the claimant's actions of manually entering his time may have violated the employer's timekeeping policy, the evidence does not demonstrate that the claimant willfully or wantonly disregarded the employer's instructions or the standards of behavior the employer had

a right to expect of him. Rather, the weight of the evidence suggests that claimant's decision to manually enter his time was a mistake arising from a misunderstanding of the employer's new timekeeping policy, inadvertence, or ordinary negligence. While carelessness can result in disqualification, it must be of such degree of recurrence as to demonstrate substantial disregard for the employer's interests. The claimant's conduct in this instance does not meet that standard. As such, benefits are allowed provided the claimant is otherwise eligible.

DECISION:

The March 27, 2024, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment on March 4, 2024, for no disqualifying reason. The claimant is eligible to receive unemployment insurance benefits, provided the claimant meets all other eligibility requirements.

Patrick B. Thomas
Administrative Law Judge

May 13, 2024
Decision Dated and Mailed

pbt/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:
1) The name, address, and social security number of the claimant.
2) A reference to the decision from which the appeal is taken.
3) That an appeal from such decision is being made and such appeal is signed.
4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at https://www.legis.iowa.gov/docs/code/17A.19.pdf or by contacting the District Court Clerk of Court https:///www.iowacourts.gov/iowa-courts/court-directory/.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:
A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:
1) El nombre, dirección y número de seguro social del reclamante.
2) Una referencia a la decisión de la que se toma la apelación.
3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en https://www.legis.iowa.gov/docs/code/17A.19.pdf o comunicándose con el Tribunal de Distrito Secretario del tribunal https:///www.iowacourts.gov/iowa-courts/court-directory/.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:
Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.