

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ELI R BLAINE**  
Claimant

**MENARD INC**  
Employer

**APPEAL 17A-UI-03875-DB**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/26/17**  
**Claimant: Appellant (1)**

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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 March 28, 2017 (reference 03) unemployment insurance decision that disallowed benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. An in-person hearing was held on May 2, 2017. The claimant, Eli R. Blaine, participated personally. The employer, Menard Inc., participated through witness Dan Newman. Employer's Exhibits 1 – 6 were admitted.

**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 receiver. This employer operates a retail home improvement store. Claimant began his employment on May 17, 2016 and worked until February 18, 2017, when he was discharged from employment. Claimant's job duties involved unloading products, driving a forklift, and assisting customers. Adam Fisher was claimant's immediate supervisor.

This employer provided claimant with a copy of its Team Member Information Booklet on May 17, 2016. See Exhibit 4. One of the written policies in the booklet states: "punching another Team Member's time card, or otherwise presenting falsified documentation including, but not limited to, invoices, pre-employment questionnaires or surveys" can result in disciplinary action. See Exhibit 3.

A separate written policy entitled "Early Punch in, Rest and Meal Break Policy" was provided to claimant on May 17, 2016. See Exhibit 5. This policy provides that "[a]ll Team Members are required to punch out for unpaid and paid rest and meal breaks. Failure to punch out for any break, or failure to report a missed punch by recording the correct time on a Punch Verification Form, will be viewed as falsifying payroll information. Any Team Member found falsifying this information will be subject to disciplinary action up to and including termination." See Exhibit 5.

On February 15, 2017 claimant was originally scheduled to work at 6:00 a.m. but received permission from his supervisor to report to work at 10:00 a.m. On this date, the employer's electronic time clock was malfunctioning. This was not the first time that the time clock had malfunctioned. When the time clock was malfunctioning claimant was required to complete a punch verification form by writing in the exact time he arrived at work, the exact time he left for any breaks, the exact time he returned from any breaks, and the exact time that he left for the day at the end of his shift.

Claimant completed a punch verification form for the hours he purported to work on February 15, 2017. Claimant reported that he arrived to work at 10:00 a.m. and that he left for his lunch break at 11:00 a.m. See Exhibit 2. Claimant then reported that he returned to work at 12:01 p.m. and left work for the day at 5:36 p.m. See Exhibit 2. Claimant submitted his punch verification form to his supervisor by putting it on the desk in the receiving area.

This matter came to Mr. Newman's attention when the human resources manager discovered claimant's punch verification form did not have the proper required signature of claimant's immediate supervisor. Mr. Newman reviewed videotape of claimant coming to work, leaving for his lunch break, returning from his lunch break, and leaving for the end of the day on February 15, 2017. The videotape showed that claimant arrived to work in the receiving area on February 15, 2017 at 10:20 a.m. See Exhibit 6. Claimant left for his lunch break on this date at 11:40 a.m. See Exhibit 6. Claimant returned from his lunch break on this date at 1:08 p.m. See Exhibit 6. Claimant left at the end of the day at 5:37 p.m. See Exhibit 6. The videotape also showed that claimant did not go into the area with the computer when he arrived at work as well as when he left and returned from lunch.

Claimant alleges that he wrote his time down for each period on that date using the same computer clock that was on the desk in the receiving area. Claimant testified he used the computer clock when reporting that he arrived at work at 10:00 a.m. See Exhibit 2. However, the actual time of his arrival in the receiving area was 10:20 a.m. See Exhibit 6. If claimant's allegations were true, this would mean that the computer clock he was using to report his time was running 20 minutes slow at this time.

Claimant reported he left for lunch at 11:00 a.m. See Exhibit 2. Claimant contends that he used the same computer clock to record this time on his punch verification form. However, Exhibit 6 shows that claimant left the store at 11:40 a.m. for lunch. If claimant's allegations were true, this would mean that the computer clock claimant reviewed to write down his time was running 40 minutes slow at this time.

Claimant reported returning from lunch at 12:01 p.m. See Exhibit 2. Claimant contends that he used the same computer clock to record his time returning from lunch. However, Exhibit 6 shows that claimant returned from lunch at 1:08 p.m. If claimant's allegations were true, this would mean that the computer clock was running 68 minutes slow at this time.

Claimant reported leaving work for the day at 5:36 p.m. See Exhibit 2. Claimant contends that he used the same computer clock to record his time when he left for the day. However, Exhibit 6 shows that claimant left for the day at 5:37 p.m. If claimant's allegations were true, this would mean that the computer clock was now somehow only running one minute slow at this time.

Claimant was aware that this employer paid him for each minute worked. Claimant was aware that he was required to accurately report his time actually worked to the exact minute on his punch verification form. Claimant had also used punch verification forms to report his time

actually worked in previous shifts. In fact, in previous instances claimant had asked a supervisor to review videotape of what time he came into work because he did not remember the exact time.

On February 18, 2017, Mr. Newman questioned claimant about whether his punch verification form was correct. Claimant responded that he believed it was and that he had reviewed the computer clock at the desk in receiving when entering in each time he either came to work or left work. When Mr. Newman observed the videotape of February 15, 2017, it showed claimant did not go to the desk with the computer on it when he left for his lunch break and returned to work from his lunch break. Claimant was discharged after speaking to Mr. Newman on February 18, 2017.

Claimant had received verbal and written warnings for absenteeism in the past. Claimant had received approval to use Family and Medical Leave Act ("FMLA") leave, if necessary, for missed time at work. Claimant did not use FMLA leave for any time on February 15, 2017.

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

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

As a preliminary matter, I find 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.

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.

This case rests on the credibility of the parties. 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). Administrative agencies are not bound by the technical rules of evidence. *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 630 (Iowa 2000).

A decision may be based upon evidence that would ordinarily be deemed inadmissible under the rules of evidence, as long as the evidence is not immaterial or irrelevant. *Clark v. Iowa Dep't of Revenue*, 644 N.W.2d 310, 320 (Iowa 2002). Hearsay evidence is admissible at administrative hearings and may constitute substantial evidence. *Gaskey v. Iowa Dep't of Transp.*, 537 N.W.2d 695, 698 (Iowa 1995).

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 administrative law judge had the ability to observe both witnesses' appearance and conduct in person during the hearing. Based upon the claimant's demeanor and conduct during the hearing, along with claimant's testimony that he reviewed the computer clock to record his time for each entry on Exhibit 2, even when the great weight of the evidence demonstrated that he did not, leads the administrative law judge to find that the claimant's testimony is not credible. In comparison, Mr. Newman's demeanor was forthright and his testimony was consistent.

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).

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 focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* 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). Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). 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).

Claimant was aware that falsification of a punch verification form could lead to discharge from employment. The employer has met its burden of proof in establishing that claimant engaged in a deliberate violation of the employer's written policy against falsification of punch verification forms. This was a substantial disregard of the employer's interests and rises to the level of willful misconduct. As such, benefits are denied.

**DECISION:**

The March 28, 2017 (reference 03) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. Benefits are withheld in regards to this employer until such time as claimant is deemed eligible.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs