

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LARRY KELLEY**  
Claimant

**APPEAL NO. 07A-UI-05392-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE IOWA CLINIC PC**  
Employer

**OC: 05-06-07 R: 02  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the May 23, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 25, 2007. The claimant participated in the hearing. Marian Klein, Employment Coordinator, and Lynn Gossen, Department/Office/Clinic Manager, participated in the hearing on behalf of the employer.

**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 receptionist/file clerk for The Iowa Clinic from July 17, 2002 to May 8, 2007. The employer received reports from other employees that the claimant and his wife, who was also an employee of The Iowa Clinic, were clocking in and then leaving for major portions of the day when they worked Saturdays. On May 5, 2007, the employer monitored the claimant's attendance throughout the day by stopping by and also interviewing several employees on Monday about what they had witnessed on Saturday. The claimant clocked in at 7:51 a.m. At approximately 9:30 a.m. Dr. Jonathan Fudge drove by the clinic on his way to the hospital and later told the employer there were no cars in the clinic parking lot. Around 10:00 a.m. Clerical Supervisor Cari Fitzpatrick arrived at the clinic and walked through the entire area and noted that the lights were on but no one was in the office. She left at 10:30 a.m. without seeing the claimant. A maintenance employee told the employer he held the door open for the claimant and his wife to enter the building around 10:00 a.m. Department/Office/Clinical Manager Lynn Gossan drove by at 11:15 a.m. and saw the claimant's gold PT Cruiser in the parking lot. A nurse reported seeing the claimant's vehicle in the parking lot at noon but stated it was gone at 3:00 p.m. when she left and there was no one in the claimant's work area. The claimant clocked out at 6:23 p.m. On May 7, 2007, Ms. Fitzpatrick asked the claimant if there were any corrections he would like to make to his time card and the claimant stated there were not. On May 8, 2007, the employer interviewed the claimant and his wife separately and found several discrepancies in their statements. The

claimant said they parked in the street because the parking lot was full due to an event at Hoyt Sherman Place. His wife said they parked in the parking lot with a couple other cars. The claimant said they went to lunch at 10:00 a.m. and went to Qwik Trip. His wife said they went to lunch at 11:00 a.m. and went to McDonalds or Burger King. The claimant said they did not leave the building again that day. The claimant's wife said they left again around 2:00 p.m. to get raspberry tea at Qwik Trip. The employer terminated the claimant's employment because it believed he was gone throughout the day, beyond taking a split lunch, and falsified his time card. The claimant testified he arrived at work shortly before 8:00 a.m. and dropped his wife off at the building because she needed to use the rest room and then went to park in the street. He further testified he and his wife left around 9:55 a.m. to go to Qwik Trip and McDonalds and the car was parked in the street when they left. They returned at 10:30 a.m. and parked in the parking lot. At 2:45 p.m. his wife received a call from a friend asking to borrow \$20.00 so the claimant and his wife met the friend at Qwik Trip and also purchased some raspberry tea before returning around 3:30 a.m.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 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.

871 IAC 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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant's testimony differs from his statement to the employer and his wife's statement to the employer and the inconsistencies and discrepancies make his testimony less credible than that of the employer. While the employer had no objection to the claimant taking a split lunch, he told the employer that he and his wife parked in the street when they arrived for work because the parking lot was full, went to lunch at 10:00 a.m. at Qwik Trip, and did not go out the remainder of the day. That recitation of events is substantially different than the statement provided to the employer by his wife and his testimony at the hearing, and their statements changed after they had time to get together and compare what each told the employer and heard the evidence against them of when other employees were present to check on them. Additionally, it is suspicious that both the claimant and his wife clocked in at the same time if he dropped her off and went to park the car out on the street. Because the claimant's statements to the employer do not match those of his wife or his sworn testimony, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

**DECISION:**

The May 23, 2007, reference 01, 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.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/kjw