

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CONNIE L GEIST**

Claimant

**APPEAL NO. 12A-UI-01368-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNITED FARMERS COOPERATIVE**

Employer

**OC: 01/01/12**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated February 6, 2012, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on March 8, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Kyle Marcum, attorney at law. Steve Krohm participated in the hearing on behalf of the employer with witnesses, Esta Duval, John Pruss, and Mark McCaffery.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time as a convenience store manager from June 9, 2003, to January 4, 2012. The claimant was a salaried employee until August 2008, when she was changed to an hourly employee.

In late December 2011, the general manager, John Pruss, became concerned about the amount of overtime pay the claimant received during 2011.

An investigation was conducted that included reviewing time records and surveillance video for several days in late December 2011. Pruss discovered times when the claimant came in outside her normal work hours, punched in on the time system, left the store, and later returned to the store to punch out.

On each of these occasions when the claimant was observed punching in and out outside her normal work hours, she was performing work for the employer including shredding confidential documents that had accumulated in the store that had to be shredded, completing store paperwork, or price checking to make sure the prices were comparable to competitors. All of these activities were part of her job duties as the store manager. She never recorded time on the time system when she was not performing work. She had never been counseled or warned for similar conduct and had never been informed by management that she was prohibited from taking work home.

After investigating the matter, the employer was convinced that the claimant was recording time and being paid for time that she did not actually work. She was discharged for this on January 4, 2012.

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

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony that she did not report any time that was not spent on work for the employer. The employer admitted that the claimant was observed taking bags and a shredder home and the claimant had a logical explanation for why it was a task better performed at home.

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established.

### **DECISION:**

The unemployment insurance decision dated February 6, 2012, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs