

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TABITHA J DECAMP**  
Claimant

**APPEAL NO: 14A-UI-08028-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VICTORIAS SECRET STORES LLC**  
Employer

**OC: 07/06/14**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the July 25, 2014, 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 August 26, 2014. The claimant participated in the hearing. Taleigha Steger, District Manager, and David Williams, Employer Representative, 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 store manager for Victoria's Secret from March 2, 2003 to July 11, 2014. She was discharged because the employer believed the claimant falsified her time card.

On July 9, 2014 District Manager Taleigha Steger was auditing employees' time punches. A manager reported to Ms. Steger that the claimant indicated another manager edited her time card June 16, 2014 showing she arrived at 8:00 a.m. instead of 8:08 a.m., but she and the other managers denied doing so. The claimant stated she did arrive at 8:08 a.m. and had to edit the other manager's time card because she was there at 8:00 a.m. but could not enter the store until the claimant arrived. She indicated she did not edit her own card as another manager must edit a time card because employees, including managers, cannot edit their own. The claimant stated if she had edited her time card it would have been obvious she did so as it would have shown she did it both on paper and on the computer but that was not the case and she did not know how her time card was edited to reflect she arrived at 8:00 a.m.

On June 20, 2014 the claimant attended a meeting at the employer's Coralville location. The meeting concluded at 3:40 p.m. and on the claimant's way home she called a manager at her store and asked her to enter her time because she was on her way home rather than back to the store. She asked the manager to clock her in on the computer and enter a lunch break as well as 30 minute travel time, to and from the meeting. The manager entered a 4:30 p.m. clock out time although the claimant stated the meeting ended at 3:40 p.m.

After reviewing those two dates during the time keeping audit the employer terminated the claimant's employment July 11, 2014.

### **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 § 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).

The employer has the burden of proving disqualifying misconduct. 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).

There is not enough evidence to conclude the claimant edited her own time June 16, 2014. The claimant denies modifying her time in and stated that if she did so it would be apparent on the computer and on paper. The employer did not provide evidence of how it could be certain the claimant changed her arrival time herself June 16, 2014 rather than it being done by another management employee. The claimant's first-hand testimony about the incident is more persuasive than the employer's testimony on that matter.

The employer did not provide the first-hand testimony of the management employee the claimant is alleged to have talked to June 20, 2014 and reportedly told to enter her time in, lunch break, time out, and travel times. Consequently, a conclusion about what the claimant told that employee with regard to what she entered on the claimant's time card June 20, 2014, cannot be reached. The claimant indicated it was possible she mistakenly reported the end time of the meeting but she did not know for sure. It is also possible that the management employee the claimant asked to enter her time transposed the 3:40 p.m. out time to 4:30 p.m. out time.

Even if the claimant self-edited her time June 16, 2014, and made an error on her time reporting to the management employee she asked to enter her time because she was off-site June 20, 2014, the claimant worked for the employer for over 11 years. She did not receive a warning about being more careful in her time reporting but was immediately discharged after the employer completed her audit. Additionally, the claimant had been warned about tardiness May 20, 2014, but was tardy on five occasions between that date and the date of her termination of employment July 11, 2014 which the employer stated placed her job in jeopardy. If she was editing her own time cards, it would seem she also would have edited those other dates when she was tardy to save her job after the warning rather than start self-editing after five incidents of tardiness following her warning and ask an employee to falsify her time sheet when she was at a meeting where it would have been clear to others at the meeting what time the meeting concluded. If the claimant acted deliberately it is more logical that she would have edited all of her time sheets after her warning instead of one. The June 20, 2014 situation was due to an error, either on the part of the claimant or on the part of the manager she was asking to enter her times for the day. There is not enough evidence to conclude that was intentional misconduct. Because the employer has shown at best one incident of improperly edited time and one error, the administrative law judge cannot conclude the employer has met its burden of proving disqualifying job misconduct. Therefore, benefits must be allowed.

**DECISION:**

The July 25, 2014, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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