

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**PATRICK WILLIAMS**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 18A-UI-02697-LJ**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/13/17**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the February 19, 2018 (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for violation of a known company rule. The parties were properly notified of the hearing. An in-person hearing was held in Des Moines, Iowa, on Wednesday, April 11, 2018. The claimant, Patrick Williams, participated. The employer, Hy-Vee, Inc., participated through Clint Draheim, HR Manager; Scott James, Store Director; and Rick Morr, Assistant Director of Store Operations. Employer's Exhibits 1 through 6 was received and admitted into the record without objection.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as an assistant manager, from September 23, 2017, until January 23, 2018, when he was discharged. On January 18, claimant was scheduled to work from 10:00 a.m. until 7:00 p.m. He arrived to work at 10:07 a.m. that day. Shortly into his shift, claimant determined he was too ill to be at work due to a stomach virus. Claimant notified a co-worker, Cory Rodgers, that he was leaving and he went home. Claimant did not page Morr or anyone else in upper management, as he was expected to do. Claimant did not clock out when he left.

Claimant returned to the store that evening to purchase some items for his family. While he was at the store, at 7:54 p.m., claimant clocked out. He did not use the time edit sheet located next to the time clock to write down the actual time that he left. Instead, he used the official time clock and punched out, indicating he left work at 7:54 p.m. that day. Claimant admits that he was aware of the time edit sheet and had used it several times during his employment. The employer realized that claimant had done this when Morr was reviewing the store's total hours by employees and saw how much overtime claimant earned that week. He then looked at the store camera video that was available and saw claimant clocking out at 7:54 p.m. on

January 18. James made the decision to terminate claimant for dishonesty and falsifying a company record. As an assistant manager, claimant was responsible for following and helping enforce the company's rules and expectations. Among his duties, claimant was responsible for signing off on subordinate employees' time edit sheets when necessary.

**REASONING AND CONCLUSIONS OF LAW:**

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

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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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).

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.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer presented credible evidence and testimony. The administrative law judge did not believe claimant's explanation that he did not have the requisite mental state to have committed misconduct.

In this case, the employer has presented substantial, credible testimony that claimant clocked out nine hours after he left work. Claimant was out of the store ill and clearly not working during those nine hours. This amounts to theft of company time. The employer has established that claimant engaged in disqualifying misconduct, even without a prior warning. Benefits are withheld.

**DECISION:**

The February 19, 2018, (reference 02) unemployment insurance decision is affirmed. 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.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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