

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS J LLOYD
Claimant

APPEAL NO. 09A-UI-17524-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

GILLETTE CO
Employer

**Original Claim: 10/18/09
Claimant: Respondent (1)**

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated November 9, 2009, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 23, 2010. The claimant participated. The employer participated by Becky Hasler, employee relations manager. The record consists of the testimony of Becky Hasler; the testimony of Dennis Lloyd; and Employer's Exhibits 1 through 23.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer manufactures manual toothbrushes at its plant in Iowa City, Iowa. The claimant was hired on August 8, 1995. He was terminated on October 20, 2009 for violating the local plant's payroll recording process.

The incident that led to the claimant's termination occurred on August 7, 2009. The claimant called in sick that day. He did not have any sick leave available to cover this day off. As a result, August 7, 2009, would have been an unpaid day. The employees at this plant have what the employer termed "ownership" of the payroll system. Each employee is charged with keeping accurate records and entering into the system "exceptions." This means that the claimant was required to enter into the payroll system that August 7, 2009, was an unpaid day. In addition, employees were required to check their paychecks to make sure that the correct amount was paid and, if not, to make the appropriate change to the system.

On or about September 28, 2009, the employer conducted a complete audit of the payroll record and discovered that the claimant was paid \$158.88 for August 7, 2009. This amount would have been included in the claimant's direct deposit back on August 21, 2009. The

employer took the position that the claimant violated the payroll reporting system and took wages to which he was not entitled. He was suspended with pay on October 7, 2009, and terminated on October 20, 2009. The claimant told the employer that he had entered the "exception" and did not intend to receive wages to which he was not entitled. The \$158.88 was deducted from the claimant's final paycheck. The claimant also offered to repay the money when the error was pointed out to him initially.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to show misconduct.

In reviewing the evidence in this case, the administrative law judge concludes that the employer has not shown a current act of misconduct. The employer's position is that the claimant deliberately failed to record his unpaid sick day on August 7, 2009, for which he was paid on August 21, 2009. The employer discovered the discrepancy on or about September 28, 2009.

Even after the discrepancy was discovered, the claimant was not suspended until October 7, 2009, and was not terminated until October 20, 2009. The employer certainly had the ability to monitor its pay records, and the length of time between the alleged discrepancy and its discovery and the subsequent suspension and termination shows that the claimant was not discharged for what the law would deem a current act of misconduct.

The greater weight of the evidence does not show that the claimant deliberately falsified his time card. He testified that he did enter the exception for August 7, 2009. The claimant can be faulted for failing to notice that he was paid for that day, but this failure is more akin to poor judgment or simple negligence as opposed to a deliberate act on his part. There is no evidence that the claimant habitually made errors on his payroll record. Ms. Hasler testified that the claimant correctly entered time both before and after the August 7, 2009, discrepancy.

The employer has not established that the claimant was discharged for a current act of misconduct. Accordingly, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The representative's decision dated November 9, 2009, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw