

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TANJLIA M KLINKER
Claimant

APPEAL NO. 07A-UI-09597-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PER MAR SECURITY & RESEARCH
CORPORATION**
PER MAR SECURITY SERVICES
Employer

OC: 09/09/07 R: 03
Claimant: Respondent (2)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Per Mar Security & Research (employer) appealed a representative's October 5, 2007 decision (reference 01) that concluded Tanjlia Klinker (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 29, 2007. The claimant participated personally. The employer participated by Bard Bigelow, Operations Manager, and Eddie Padilla, Security Coordinator. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 7, 2000, as a full-time courier. The employer allowed the claimant two fifteen minute and one thirty minute breaks during the day. The employer talked to the claimant about why her route took the claimant so long to perform. The claimant said she was driving slower than others and took her time to perform duties. One of the claimant's accounts ended but the claimant took the same amount of time to perform her duties as she did when the three-hour per week account was in the claimant's schedule. The employer again asked the claimant why this was so but the answer from the claimant remained the same. The employer talked to the claimant on four occasions about her use of time.

On September 11, 12 and 13, 2007, the employer placed a GPS tracking device in the vehicle the claimant used for the employer. The employer discovered the claimant took two hours of breaks on September 11, 2007, 95 minutes of break on September 12, 2007, and 150 minutes of break on September 13, 2007. In addition, the claimant returned to the office and left work at

approximately 3:11 p.m. on September 11, 2007. She signed out that she stayed until 3:30 p.m. The employer terminated the claimant on September 14, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for 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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). As persuasive authority, the falsification of an activity log book constitutes job misconduct. Smith v. Sorensen, 222 Nebraska 599, 386 N.W.2d 5 (1986). An employer has a right to expect employees to follow instructions in the performance of her job, properly report time and take only allowable breaks. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant's disregard of the employer's interests is misconduct. As such she is not eligible to receive unemployment insurance benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in

good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's October 5, 2007 decision (reference 01) is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,280.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css