

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIRK SANDBACH

Claimant

APPEAL NO: 09A-UI-17171-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAN DIEST SUPPLY CO

Employer

OC: 10-11-09

Claimant: Appellant (2R)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 5, 2009, 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 December 21, 2009. The claimant participated in the hearing. Kevin Spencer, Director of Plant Operations and Carolyn Cross, Personnel Manager, 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 production operator for Van Diest Supply from September 6, 2005 to October 15, 2009. On October 13, 2009, the claimant and co-worker Janelle Hubbard clocked out at the same time to go to lunch. When the claimant returned to the time clock at the end of lunch he noticed Ms. Hubbard had not clocked back in so he reflexively clocked her in too. He testified he was not thinking and was just trying to be helpful and did not intend any harm toward the employer. He stated it was an impulse and it just happened. He was aware of the employer's policy stating that recording the work time of another team member, or allowing another team member to record your work time, or allowing falsification of any time card, either your own or that of another team member, could result in disciplinary action up to termination. After being told of the incident and viewing the security tape the employer terminated the claimant's employment October 15, 2009. The claimant told the employer Ms. Hubbard did not have anything to do with the situation. The claimant was previously warned in writing September 12, 2006, for entering the plant without wearing a respirator; received a written warning and four-week pay reduction November 3, 2007, for transferring a product from tank 111 and mistakenly opening the valves to tank 110 which overflowed, spilling the product; and a written warning July 22, 2008, for taking a 19-minute break instead of a 10-minute break.

The claimant's wife suffers from a chronic illness, has no use of her right arm and her kidneys are in "bad shape." He estimated he will have to stay home with his wife for 10 to 12 months and is not able to work at this time.

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 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 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). While the claimant clearly made an error and violated the employer's policy by clocking Ms. Hubbard in when she had not yet returned from lunch, his explanation that it was an impulse and happened because he was not thinking and was trying to be helpful was credible. Punching a fellow employee's time card can constitute job misconduct. Martin v. IDJS, (Unpublished, Iowa App. 3/23/88). The Martin case recognized that the claimant's actions could be misconduct but does not say

clocking in another employee is misconduct as a matter of law. The claimant received one warning in 2006, 2007 and 2008. This is an isolated incident of poor judgment and as such does not rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

The issue of whether the claimant is able and available for work has not yet been adjudicated by the Claims Section.

DECISION:

The November 5, 2009, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. This issue of whether the claimant is able and available for work has not yet been adjudicated by the Claims Section. That issue is remanded to the Claims Section for an initial determination.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs