

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JON E BENTON**  
Claimant

**APPEAL NO: 13A-UI-07891-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VON MAUR INC**  
Employer

**OC: 11/18/12**  
**Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's June 28, 2013 determination (reference 09) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in part of the hearing. Amanda Tirella, a floor manager, testified on the employer's behalf.

After Tirella completed her testimony, it was discovered that the claimant was no longer on the line when he was asked if he had any questions for Tirella and he did not respond. The claimant was called again to connect him to the conference call, but he did not answer his phone. Tirella remained available for a period of time to give the claimant an opportunity to call the Appeals Section again to participate in the hearing. The claimant did not contact the Appeals Section again. Based only on the employer's testimony, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The employer hired the claimant as the manager of the jewelry department on February 18, 2013. The claimant worked full time. When the claimant started his employment, he received a copy of the employer's policies and the employer's code of conduct. One of the codes of conduct informs employees that if they commit fraudulent activities, including deception in time-keeping records, they could be discharged.

Sometime prior to May 16, 2013, a manager talked to the claimant about making sure he returned from his lunch break on time. On May 16, the claimant worked noon to 9 p.m. He went for a lunch break at 4:08 p.m. When he returned from his meal break, he forgot to punch in. On May 16, Tirella was helping a customer in the claimant's department around 5:08 p.m. and the claimant was not back from his meal break. The claimant did not return from his meal break until 5:25 p.m.

The next time the claimant was scheduled to work, he received a warning that he missed a punch. The claimant then reported that he returned to work from his meal break on May 16 at 5:08 p.m. When the employer talked to the claimant about the time he reported he had come back from his break on May 16 and when he actually had come back, the claimant indicated he had forgotten what time he came back to work.

On May 28, the employer discharged the claimant after concluding he falsified his timecard on May 16, 2013. The claimant reopened his claim for benefits during the week of May 26, 2013. He has filed weekly claims since May 26, 2013.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

Based on the employer's testimony, the employer established that the claimant was discharged for work-connected misconduct. Since the claimant did not present his testimony, the evidence does not indicate why the claimant reported on May 16 that he returned to work by 5:08 p.m. when he actually returned to work 17 minutes later. Since the claimant completed his missed punch, the facts indicate he intentionally misreported his time. Therefore, as of May 26, the claimant is not qualified to receive benefits.

An issue of whether the claimant has been overpaid benefits and if he is required to pay back any overpayment of benefits he may have received since May 26, 2013, will be remanded to the Claims Section to determine.

**DECISION:**

The representative's June 28, 2013 determination (reference 09) is reversed. The employer discharged the claimant for reasons amounting to work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of May 26, 2013. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

The issue of whether the claimant has been overpaid and if he will be required to pay back any overpayment of benefits he may have received since May 26, 2013 is **Remanded** to the Claims Section to determine.

---

Debra L. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

dlw/pjs