

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CATHERINE NAVARRO

Claimant

APPEAL NO. 13A-UI-09474-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 07/14/13

Claimant: Respondent (2/R)

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

Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Swift Pork Company (employer) appealed an unemployment insurance decision dated August 5, 2013, reference 01, which held that Catherine Navarro (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 23, 2013. The claimant participated in the hearing. The employer participated through Luis Meza, Human Resources Supervisor. Employer's Exhibits One through Three were admitted into evidence.

ISSUE:

The issue is whether the claimant was discharged for work-related misconduct, and if so, whether she was overpaid unemployment insurance benefits, whether she has to repay the benefits and/or whether the employer's account remains subject to charge.

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 employed as a full-time accounting specialist from May 15, 2006 through July 16, 2013 when she was discharged for time card falsification. She received a final warning on July 9, 2013 for a repeated failure to use the time clock even though she had been verbally counseled about it. The employer began investigating the claimant's time records as a result of the warning and noticed that the claimant's time records did not accurately reflect the time she worked. The IT Department provided information as to when the claimant began and ended her computer network activity and these times were compared to her in and out punches on the time clock. A formal report containing this information was completed covering the dates from April 25, 2013 through July 11, 2013.

The report showed four dates which showed hours worked with no network activity. These dates were April 28, May 5, June 16 and June 30, 2013. The employer compared these dates to the surveillance recordings which confirmed the claimant was not working at her desk.

Additionally, the claimant regularly stopped working on the network at one time and then clocked out from a different location several hours after that time. The following shows the discrepancies from July 5, 2013 through July 11, 2013:

In Punch	Network activity	Network activity	Out punch	Location
8:00 a.m.	8:37 a.m.	04:26 p.m.	8:30 p.m.	Bobbie added
6:59 a.m.	7:18 a.m.	10:52 a.m.	7:43 p.m.	N Scale House
8:51 a.m.	8:59 a.m.	11:35 a.m.	6:39 p.m.	Casings
7:25 a.m.	7:36 a.m.	02:24 p.m.	4:00 p.m.	Bobbie added
8:14 a.m.	9:31 a.m.	03:14 p.m.	8:10 p.m.	Barn
7:40 a.m.	7:59 a.m.	10:50 a.m.	8:03 p.m.	Barn
9:05 a.m.	9:32 a.m.	03:48 p.m.	8:45 p.m.	regular location

The employer had asked the employees who worked at the guard shack to keep track of the claimant's time activities when she worked. On July 13, 2013, the claimant clocked in at 8:10 a.m. and left for lunch at 12:10 p.m. but she did not return to work. However, her time card later showed she clocked in at 8:16 p.m. and clocked out at 8:22 p.m. The employer tried to meet with the claimant on July 15, 2013 around 4:15 p.m. but she had already left for the day. On the following day, the employer learned the claimant had clocked out at 7:00 p.m. on July 15, 2013 even though she was gone by 4:15 p.m. The employer met with the claimant on July 16, 2013 and reviewed her time records with her. The claimant admitted she sometimes forgot to punch out and would return to the plant, sometimes hours later, to clock out. At the time of discharge, she admitted she knew that was considered stealing but she subsequently denies doing anything wrong.

The claimant filed a claim for unemployment insurance benefits effective July 14, 2013 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. It is the employer's burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989).

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1). The claimant was discharged on July 16, 2013 for time card falsification. One of the most fundamental duties owed to an employer is honesty. An employer can reasonably expect that an employee will work the hours reported on a time card and that time cards will not be falsified.

The greater weight of the evidence in this case confirms the claimant repeatedly falsified her time cards. A single wrong entry might be excused as an honest mistake but the pattern here is one of deliberate falsification. The employer has met its burden and work-connected misconduct as defined by the unemployment insurance law has been established. Benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be

recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding regarding the separation which resulted in the preliminary award of benefits. If recovery of an overpayment from a claimant is not required because the employer did not participate in the initial proceeding that resulted in an award of benefits, the employer will be subject to charge for the overpaid benefits. Iowa Code § 96.3-7. Employer participation would include testimony from a firsthand witness or the name and number of a firsthand witness who may be contacted for rebuttal. See 871 IAC 24.10(1)

In the case herein, the benefits were not received due to fraud or willful misrepresentation and while the name and number of an employer witness was provided for the hearing, the witness was not available to participate. Consequently, the claimant is not responsible for repaying the overpayment and the employer's account remains liable for the overpaid benefits. This matter is remanded to determine the amount of the overpayment.

DECISION:

The unemployment insurance decision dated August 5, 2013, 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 been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for determination of the overpayment.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs