

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY JUNGEN

Claimant

APPEAL NO. 07A-UI-07761-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

INTERSTATE POWER & LIGHT COMPANY

Employer

**OC: 07/15/07 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 7, 2007, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 12, 2007. Claimant participated personally. Employer participated by Deborah Neyens, Managing Attorney, with witnesses Linda Poe, Plant Manager, and Mark Ohnemus, Operations Manager. Exhibits One through Four and A were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Claimant last worked for employer on July 10, 2007.

Claimant was discharged on July 13, 2007 by employer because claimant falsified time cards Nine times from June 12, 2007 through July 3, 2007. Claimant left work early on each occasion, as shown by Employer Exhibit Two. Claimant would come in early and work through his breaks in order to leave early. Claimant did not have permission to leave work early. Claimant did not have permission to come to work early. Claimant did not have permission to work through breaks. Claimant's deviation from his shift times was without knowledge or permission of employer. This was a crucial time of the year for employer. Claimant was needed to perform his work according to his schedule. Claimant was specifically warned that his job was in jeopardy due to performance.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning falsification of time cards. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant left work early on multiple occasions. Claimant repeatedly deviated from his work schedule on multiple occasions without permission at a crucial time of the year. The prior warning weighs heavily toward a finding of an intentional policy violation. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated August 7, 2007, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/kjw