

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC ELLSWORTH
Claimant

APPEAL NO: 15A-UI-01970-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INC OF D M
Employer

OC: 01/18/15
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 6, 2015, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 16, 2015. The claimant participated in the hearing. Mikayla Sille, Staffing Specialist, 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 welder/general laborer for Manpower of Des Moines last assigned to Co-Line Manufacturing from May 21, 2014 to January 6, 2015. The assignment ended because the client reported to the employer that the claimant falsified his time card.

The client was on shut-down from approximately December 22, 2014 through January 5, 2015, but the claimant was one of a few employees allowed to volunteer to work a few hours per day during that time.

The claimant's regularly scheduled hours were 6:00 a.m. to 2:30 p.m. but after his welding position was completed about five months prior to his separation he began working in the paint area and reported for work at 5:00 a.m. so he could prepare the paint room for the employees coming in at 6:00 a.m.

On January 6, 2015, the claimant was discharged after Managers Dave Hobbs and Eric Leonard reported to their employer, Co-Line, the claimant was sleeping in his car when they arrived at 5:00 a.m. January 3, 2015, and that they observed him enter the building at 6:30 a.m. Mr. Leonard went over to the paint department and stated all of the lights and machines were off and the claimant was gone by 8:30 a.m. The claimant indicated on his time card he worked from 5:00 a.m. to 10:00 a.m.

The claimant testified he arrived for work at 4:45 a.m. and waited until 5:00 a.m. in his vehicle for the woman who opens the building to arrive. He did not fall asleep as it was quite cold and he was watching for the employee who lets him in the building. He entered the building through the west end door which is closer to the paint department on the second level while Mr. Hobbs and Mr. Leonard entered the building through the east door of the building that goes into the machine shop. Shortly before 6:00 a.m. Mr. Leonard came over to his area and asked him why he was there and the claimant explained he was cleaning the paint booths and doing other tasks assigned by his foreman so the paint department employees would be able to start working immediately when they reported for work following the shutdown January 5, 2015. Between 6:00 and 6:30 a.m. the claimant went up to the area of the building where the air compressors are located to turn them on. Mr. Hobbs and Mr. Leonard would have seen the claimant at that time because he crossed back through their area on his way back. The claimant was also wearing his coat as it was cold in the building. Also around that time the claimant contacted the press operator foreman to ask him to secure a large container for him that had to be retrieved with a forklift. The foreman was busy and unable to get the container for the claimant until roughly 9:00 a.m. The claimant spent the rest of his time cleaning the paint booths and in the paint kitchen. He left at 9:50 a.m., instead of 10:00 a.m., the time he was scheduled to complete his shift, because he did not take a break.

Over the weekends the claimant completed his Manpower time sheets online. On Monday mornings, his foreman would ask him what hours he worked the previous week and the employer would recite his hours. The claimant never entered his time on Co-Line's computer time sheet program and did not even know where Co-Line's computer was located. The claimant told his supervisor the hours he worked over the two-week shutdown period January 5, 2015.

On January 5, 2015, Co-Line's bookkeeper contacted Manpower and stated Mr. Hobbs and Mr. Leonard said the claimant's hours for January 3, 2015, were incorrect as he did not enter the building until 6:30 a.m. and they believed he was gone by 8:30 a.m. but his time sheet said he worked from 5:00 a.m. to 10:00 a.m. Co-Line believed the claimant falsified his time card and asked that his assignment be terminated. The claimant disputed the reason given by the client for the end of his assignment. Manpower notified the claimant his assignment was over and why and informed him he could reapply for work with Manpower in six months.

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 § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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).

The claimant credibly denied he falsified his time card January 3, 2015. He accounted for his time at work from 5:00 a.m. to 10:00 a.m. and while Mr. Hobbs and Mr. Leonard told the employer the claimant did not arrive until 6:30 a.m. and was gone by 8:30 a.m., the claimant persuasively countered their statements with his first-hand account of the events of January 3, 2015, and his testimony carries more weight than the hearsay statements of Mr. Hobbs and Mr. Leonard, who were not present for the hearing to either provide testimony or face cross-examination questions.

The claimant also addressed how he reported his time. He completed his timesheet for Manpower online at home on Saturdays and then his foreman asked him on Mondays what hours he worked the previous week. The claimant never entered his time at Co-Line and did not even know where the computers to do so were located at the company. The hours he reported from home and then reported to his foreman January 5, 2015, were consistent.

Under these circumstances, the administrative law judge concludes the claimant did not falsify his time card for January 3, 2015. The employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The February 6, 2015, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs