

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

---

**CARL A LINDEN**

Claimant,

and

**SWIFT PORK COMPANY**

Employer.

:  
:  
:  
:  
:  
:  
:  
:  
:

**HEARING NUMBER: 14B-UI-12908**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.5-2-A**

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Employer appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

The Claimant, Carl A. Linden, worked for Swift Pork Co. from December 10, 2002 through October 23, 2013 as a full-time pet food packer. (48:32-48:03; 47:46-47:38) His regular hours were from 3:30 p.m. until one hour after production, i.e., 3:30 a.m. (45:40-46:30) The Employer has a policy regarding the punching in and out of work on time cards. If an employee fails to punch in or out three times within a given 30-day period, a counseling will occur. That policy prohibits the falsification of time cards and a violation could result in immediate termination. (46:23-46:19; 44:59-44:40) It is the employee's sole responsibility to maintain a properly working ID badge. (43:06)

Mr. Linden had become 'notorious' for failing to punch in and out beginning in September of 2013. (45:37-44:30) His supervisor approached him numerous times about his violations; each time, Mr. Linden offered no particular reason for his actions. (43:49-43:37) He later claimed that his badge wasn't working properly. His supervisor warned him several times about not punching in and directed him to contact Human Resources to remedy the matter on several occasions, which he never did. (43:36-43:17; 32:19-32:08)

On Friday, October 11, 2013, the Employer observed Mr. Linden punching in at 3:42 p.m., which was 12 minutes beyond his start time of 3:30 p.m. (47:22-47:06; 25:37) He then signed a 'sign-in' sheet that indicated that he was at work since 3:30 p.m. (47:02; 39:21) He later signed out as leaving at 3:30 a.m., when he was actually seen leaving at 3:00 a.m. in his street clothes. (46:58-46:21; 39:08) On Saturday, October 12<sup>th</sup>, Mr. Linden again failed to sign in or punch in or out. (31:47-31:39) The Employer questioned the Claimant during a meeting about the October 11<sup>th</sup> discrepancy on his time card. Mr. Linden offered no explanation, but became defensive. (37:06-35:36)

On Monday, October 14, 2013, he was placed on suspension for falsifying his time card. (48:14; 47:53-47-45; 47:34-46:43) Upon his suspension, Mr. Linden turned in two ID cards. (42:00; 41:02) All employees are supposed to have only one ID card in their possession for which each card contains an employee ID number that remains constant throughout that employee's employment. (41:57-41:44) On the back of each ID card, there is badge ID number that is subject to change in the event an employee loses his ID card. (41:40- 41:13) The Employer can run the ID card through the Employer's Time Management System and obtain a report of the employee's punch in and out times according to the badge number on his card. The Employer ran a report of the Claimant's timecard and discovered that both of Mr. Linden's 2 ID cards had been inactive since July of 2013. (40:59-40:47) His ID was never restricted as the Claimant so claimed in the past. The issue with the Claimant's failure to punch in was that "...he was using multiple IDs..." (40:58-40:28) The Employer also saw that there were very few days that Mr. Linden actually worked until the end of his shift at 3:30 a.m. (32:40-32:25)

After completion of the Employer's investigation, Mr. Linden was terminated for violating the company policy. (47:31-46:26)

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

Iowa Code Section 96.5(2)(a) (2013) provides:

*Discharge for Misconduct.* If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993)).

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 substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 NW2d 661 (Iowa 2000).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Employer's version of events. The Employer provided credible testimony that its company policy prohibits the falsification of timecards and also sets out a warning that violators will be subject to discipline. It is clear from this record that the Claimant was having an ongoing problem with punching in and out, which led to his signing in and out on a sign-in sheet, instead. Although the Employer counseled and warned him on several occasions to get the matter taken care of, Mr. Linden continued allegedly have problems.

The Claimant denied ever receiving any warnings about his repeated failure to properly punch his time card, which we find not credible. Additionally, his overall testimony was evasive and generally lacking in direct response to the Employer's questions. Even when the Employer questioned Mr. Linden about his October 11<sup>th</sup> manner of reporting to work during their meeting prior to his suspension, rather than answer the question directly, he argued that everybody puts down the same start time even though their actual times are generally not the same. His argumentative demeanor makes his testimony even less credible. The fact that the Claimant did not follow up with his supervisor on the 11<sup>th</sup> about his time card and sign-in discrepancy makes it more probable than not that his behavior was not only intentional, but a habitual disregard for the Employer's time card policy. For this reason, we conclude that the Employer satisfied their burden of proof.

## **DECISION:**

The administrative law judge's decision dated December 12, 2013 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for disqualifying misconduct. Accordingly, until such time he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. See, Iowa Code section 96.5(2)"a".

The Claimant submitted a written argument to the Employment Appeal Board. The Employment Appeal Board reviewed the argument. A portion of the argument consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the

argument and additional evidence were considered, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

---

Monique F. Kuester

---

Cloyd (Robby) Robinson

AMG/fnv