IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

PAUL L HEGSTROM
Claimant

MIDAMERICAN ENERGY COMPANY
Employer

APPEAL NO. 10A-UI-07509-CT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/25/10
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Paul Hegstrom filed an appeal from a representative's decision dated May 19, 2010, reference 01, which denied benefits based on his separation from MidAmerican Energy Company. After due notice was issued, a hearing was held by telephone on August 18, 2010. Mr. Hegstrom participated personally and was represented by Jay Smith, Attorney at Law. The employer participated by Mark Nibaur, Operations Manager, and Bryan Lohstreter, Senior Labor and Employee Relations Representative. The employer was represented by Peg Roy, Attorney at Law/Corporate Counsel. Exhibits One through Five were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Hegstrom was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Hegstrom was employed by MidAmerican Energy Company from June 28, 1978 until April 26, 2010. He was last employed full time as a meter reader and utility person. He was discharged for falsifying records.

Mr. Hegstrom was assigned a mobile data terminal (MDT) to receive assignments and to record and transmit data. He was to log on at the start of his shift and off at the end of his shift. He rarely received work assignments by way of the telephone. His home was considered his "service center" and he began and ended his workday from that location. He was guaranteed 40 hours of work each week. In March of 2010, it came to the employer's attention that Mr. Hegstrom may not have been putting in full, eight-hour days. As a result of this report, an investigation was initiated.

At all times material to this decision, Mr. Hegstrom was scheduled to work from 6:30 a.m. until 2:30 p.m. The employer reviewed his records for the period May 1, 2009 through March 24, 2010. A comparison was made between the times he logged in and out on the MDT and the times he indicated on his timecard. There were a substantial number of occasions on which he

logged out for the day on the MDT prior to the ending time he listed on his timecard. During the period being reviewed, there were over 120 occasions on which he logged out on the MDT more than 15 minutes earlier than the time he indicated on his time card. The employer calculated that he had been paid for 140 hours of time he did not work between May 1, 2009 and March 24, 2010.

Prior to May 1, 2009, employees were allowed to leave when all assigned work was completed and claim eight hours of pay even if they worked fewer than eight hours that day. This was known as "eight and skate." This system was eliminated with the new collective bargaining agreement that became effective May 1, 2009. Mr. Hegstrom was aware of the elimination of "eight and skate" by no later than June 1, 2009. Employees were still guaranteed 40 hours of work but were expected to remain available to receive work orders until the end of the shift.

The employer learned of the possible falsifications on March 24, 2010 and began interviewing individuals on March 25. Mr. Hegstrom was interviewed on April 6, at which time he indicated there was a problem with his MDT. He had first noted the problem in October of 2009. It was determined that the MDT unit was coming into contact with the antennae of his vehicle. When that happened, he would get a message on the screen indicating he was "out of coverage" and no data would be transmitted. He would have to take his vehicle to the parking lot in Sioux City in order to obtain the coverage necessary for the MDT to function properly. This process did not alter the validity of the information being transmitted. Mr. Hegstrom could offer no other explanation for the discrepancies between the MDT information and his timecards.

The employer completed its investigation on April 15 and notified Mr. Hegstrom of his pre-disciplinary hearing to be held on April 20. He was suspended on April 20 and notified of his discharge in a letter dated April 26, 2010. In addition to his failure to work eight-hour days and his timesheet falsifications, the letter also cited the fact that he sometimes reported he was at job sites that were miles away from where the GPS unit in his vehicle placed him.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Hegstrom was discharged for timecard theft. He knew by no later than June 1, 2009 that he was expected to work a full eight-hour day, that "eight and skate" was no longer recognized. The problem does not appear to be the fact that he went home after he completed assigned work but that he failed to remain available until the end of his shift.

Mr. Hegstrom testified that he rarely received work assignments by telephone. Therefore, he knew that any work assignments he was to receive would be transmitted through the MDT. He knew he would not be able to receive work assignments if he was logged off the MDT. In spite of knowing that he had not worked eight hours and in spite of knowing he was not available to receive work after the MDT was logged off, Mr. Hegstrom still claimed eight hours of pay for the day. Even if no work came in after he went home, it was reasonable for the employer to expect him to continue to be available until his quitting time. By claiming time that he did not work and was not available to work, Mr. Hegstrom committed time card theft. Such conduct is clearly contrary to the type of behavior an employer has the right to expect.

The administrative law judge appreciates that Mr. Hegstrom's supervisor was aware of his activities. However, the condoning of job misconduct by an employer's agent is not binding on the employer if that conduct is not authorized and is contrary to the interests of the employer.

Crane v. Iowa Department of Job Service, 412 N.W.2d 194 (Iowa App. 1987). It is clear that Mr. Hegstrom's conduct was not authorized as "eight and skate" had been eliminated. It was clearly contrary to the employer's best interests to pay an individual for time not worked. Therefore, the fact that the supervisor was aware of his activities would not obviate a finding of misconduct. For the reasons stated herein, it is concluded that the employer has satisfied its burden of proving disqualifying misconduct. As such, benefits are denied.

DECISION:

The representative's decision dated May 19, 2010, reference 01, is hereby affirmed. Mr. Hegstrom was discharged for disqualifying misconduct. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

_____
Carolyn F. Coleman
Administrative Law Judge

_____
Decision Dated and Mailed

cfc/css