

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Kelly Glick was employed by Metz Baking from February 1, 2001 until August 11, 2005. He was a full-time loader. At the time of hire the claimant received a copy of the employee handbook which contained policies regarding timecards. The handbook stated an employee may be discharged for any falsification of timecards or any company records. Documents with similar information were posted in the work place and by the time clock.

At one point in his employment a former supervisor would allow crew members to go home early if the work was done, and he would approve their time cards. However, this would be done on a day-to-day basis and did not constitute license to go home early any time a crew member chose to do so. The collective bargaining agreement guarantees eight hours of pay per shift, but this only meant employees would not be sent home early and docked pay. Work would be found for them even if it was only "pushing a broom" to get the full eight hours.

On August 3, 2005, the claimant was scheduled from 5:00 p.m. until 1:00 a.m. He left at 12:20 a.m. and filled out his time card manually, instead of using the time clock, to show 1:00 a.m. as his departure time. He did not have permission from his supervisor and he did not request the supervisor to initial or approve the manually written time the next day. Such supervisor approval is required as the claimant knew, because even his previous supervisor would approve any manually written time cards. Mr. Glick indicated he did not ask the supervisor to approve it because he felt the supervisor should have come to him to ask him about it.

The supervisor noticed the unauthorized handwritten leaving time on the card and faxed it to Human Resources Generalist Cindy Peterson. However, Ms. Petersen was working at another location at that time and was not aware of the incident until the district manager called her on Monday, August 8, 2005. The supervisor and the district manager do not have the authority to discharge an employee without first consulting with human resources.

Ms. Peterson traveled to the claimant's work place on August 11, 2005, and interviewed him about the incident. He admitted to leaving early without permission from a supervisor. He thought he was guaranteed eight hours of work even if he did not work eight hours, based on his previous supervisor's policies. However, he acknowledged the previous supervisor always gave permission on a day-to-day basis and had no "blanket" allowance for anyone to go home whenever he chose. He was discharged by Ms. Peterson on August 11, 2005.

Kelly Glick has received unemployment benefits since filing a claim with an effective date of August 7, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant had received the employee handbook and had access to the documents and memos posted at the time card and in the work place regarding the proper handling of time cards and other company records. His assertion that a previous supervisor had allowed the crew members to go home early may be true, but the record establishes that any permission to leave early was always done by the supervisor, on a day-to-day basis, and the time cards approved by the supervisor. Mr. Glick did not attempt to contact any supervisor on the day in question, nor did he ask the supervisor to approve the time card the next day. His assertion that the supervisor should have come to him about the time card is not convincing, as it was his time and therefore his responsibility.

The record establishes the claimant was discharged for leaving work without permission and falsifying his time card in violation of a know company rule. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal

to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of August 31, 2005, reference 01, is reversed. Kelly Glick is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible. He is overpaid in the amount of \$972.00.

bgh/s