

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EVAN T BRODERSEN
Claimant

APPEAL NO: 14A-UI-01101-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BACOR LTD
Employer

OC: 12/22/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Bacor, Ltd. (employer) appealed a representative's January 24, 2014 decision (reference 01) that concluded Evan T. Brodersen (claimant) was qualified to receive unemployment insurance benefits after a separation from employment." After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 20, 2014. The claimant participated in the hearing. Loring Waterman appeared on the employer's behalf and presented testimony from two other witnesses, Bob Baughman and Aaron Malone. During the hearing, Employer's Exhibits One through Six were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on October 1, 2012. He worked full time as a merchandiser. His last day of work was December 20, 2013. The employer discharged him on that date. The reason asserted for the discharge was having unaccountable time on December 19.

One of the claimant's primary business accounts was a Wal-Mart store in Clinton. The claimant had gone there on the morning of December 19 and worked there until approximately 11:00 a.m. He then went to first one other business account until about noon, and then to another business account at about 1:00 p.m. At that account he met up with another merchandiser, who told him that the employer wanted him to report back to the warehouse. The claimant believed he had arrived back at the warehouse at about 1:30 p.m., but the employer asserted it was about 2:45 p.m.

The account manager, Baughman, had gone to the Wal-Mart sometime after noon. He had seen things at the Wal-Mart store that the claimant needed to complete or fix, and so wanted him to return to the store. He was unable to communicate directly with the claimant as the claimant's phone was not working. He waited at the store until the claimant contacted him on someone else's phone after returning to the warehouse. He did not receive the call from the claimant until about 2:48 p.m. By that time it was too late for the claimant to come back out to the store to address the issues. The employer concluded that the claimant had about an hour of unaccounted time during which he should have been doing work at the Wal-Mart store.

The claimant had been given some prior disciplines for having a negative attitude with the employer and with the business client. There had not been a prior concern about unaccountable time. Because of the employer's conclusion that the claimant had the unaccounted for hour on December 19, it determined to discharge the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The gravity of the incident and the number of prior violations or prior warnings are factors considered when analyzing misconduct. The lack of a current or comparable warning may detract from a finding of an intentional policy violation.

The reason cited by the employer for discharging the claimant is his unaccounted hour on December 19. Under the circumstances of this case, the claimant's inability to account for that hour was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has

not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's January 24, 2014 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs