

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC MADSEN

Claimant

APPEAL NO. 10A-UI-09182-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EAST SIDE JERSEY DAIRY INC

Employer

OC: 05/09/10

Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Eric Madsen (claimant) appealed a representative's June 17, 2010 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with East Side Jersey Dairy (employer) for dishonesty in connection with his. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 12, 2010. The claimant participated personally and Elizabeth Madsen. The employer participated by Robert Walker, General Manager, and Joe Kirk, Distribution Manager. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 7, 2005, as a full-time distribution driver. The claimant's employment was governed by a local bargaining agreement. The employer issued the claimant verbal warnings for attendance and failure to follow instructions.

On May 3, 2010, the claimant's work truck was parked at a customer's loading dock from 6:03 to 9:53 a.m. The claimant reported on his time sheet that he worked from 7:00 to 9:00 a.m. The video cameras at the customer's location showed the claimant working from 9:29 to 10:00 a.m. The employer issued the claimant a disciplinary suspension from May 11 through July 4, 2010.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was suspended for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). As persuasive authority, the falsification of an activity log book constitutes job misconduct. Smith v. Sorensen, 222 Nebraska 599, 386 N.W.2d 5 (1986). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. He intentionally failed to record the correct times he worked. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was suspended for misconduct.

DECISION:

The representative's June 17, 2010 decision (reference 01) is affirmed. The claimant was suspended from employment for misconduct. Benefits are withheld until such time as claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css