

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CHRISTIAN F SANDSTROM
Claimant

**PRAIRIE MEADOWS RACETRACK &
CASINO**
Employer

APPEAL 15A-UI-12265-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/11/15
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 2, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on November 23, 2015. The claimant participated personally. The employer participated through Megan Sease, human resources generalist.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a HVAC mechanic and was separated from employment on October 15, 2015, when he was discharged.

The employer has a policy which prohibits falsification of documents, including timekeeping records and break logs. Employees clock in and out based on entering their personal pin number followed by a fingerprint scan. Per the employer's policies, the claimant was also allowed two breaks of 15 minutes and a 30-minute lunch for each shift. The claimant was made aware of the employer's policies at the time of hire, and also served as the union steward, and therefore aware of the company's handbook.

The final incident occurred when it was reported that the claimant was pulling his vehicle up to the time card station, parking his vehicle, clocking in, and then leaving to park his vehicle in the employee parking lot. The employer initiated an investigation of the claimant's whereabouts for the week of October 4 through 8, 2015, and confirmed that several mornings, he arrived early, and would clock in. He would then drive another employee to his car, which was parked in the

far employee lot, before smoking a cigarette and beginning his work. The claimant's shift began at 7:00 a.m. and as a result of his delay, he began performing work at 7:54 a.m. on October 4, 2015, 7:25 a.m. on October 5, 7:20 a.m. on October 6, 7 and 8. The claimant denied wrongdoing, and stated at the hearing he was "guilty of being a nice guy" by helping his co-worker with a ride to his vehicle.

In addition, the employer's investigation, the claimant was determined to be taking excessive breaks and lunches, while clocked in. The claimant was not expected to clock out for breaks or lunch but expected to keep within the allotted time guidelines. Instead, the employer found the claimant spent 44 minutes in the cafeteria on October 4, 48 minutes on October 5, 45 minutes on October 6, and 47 minutes on October 8, 2015. During this time, the claimant was on the clock representing he was at work. When confronted by the employer, the claimant said he would lose track of time. However, at the hearing, the claimant asserted he was performing work in adjacent buildings to the cafeteria and stairwells and outside, and the employer's recordings or surveillance wouldn't be able to capture that activity. The claimant was suspended pending investigation, and subsequently discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

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 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the greater weight of the evidence indicates that the claimant falsified his time card inasmuch as he clocked in representing he was working for hours than he did not actually perform work. Even if the claimant's explanation regarding his whereabouts for his breaks and lunch periods was credible, it does not negate or mitigate the fact the claimant on at least five occasions clocked in to his shifts, without his vehicle properly parked in an employee lot, left the premises and drove another employee to his vehicle, parked his car, and smoked a cigarette, all while being clocked in as though he was performing work. The claimant knew or should have known his conduct was in disregard of the employer's interests and reasonable standards of behavior that the employer has a right to expect of its employees. Falsification or misrepresentation of a time card constitutes theft from the employer and constitutes disqualifying misconduct. Benefits are withheld.

DECISION:

The November 2, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/pjs