

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON L WAMBERG
Claimant

APPEAL NO. 08A-UI-05572-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS DAIRY INC
Employer

**OC: 04/27/08 R: 1
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Wells Dairy, filed an appeal from a decision dated June 6, 2008, reference 01. The decision allowed benefits to the claimant, Jason Wamberg. After due notice was issued, a hearing was held by telephone conference call on July 8, 2008. The claimant participated on his own behalf. The employer participated by OC Manager Ronett Powell and was represented by TALX in the person of Chris Scheibe. Exhibits One, Two, Three, and Four were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Jason Wamberg was employed by Wells Dairy from August 2004 until April 28, 2008, as a raw material gatekeeper. He had received progressive disciplinary action beginning in April 2007 for attendance and performance issues. The final warning and five-day suspension on January 30, 2008, notified him his job was in jeopardy if there were any further violations of company policy.

On April 28, 2008, the claimant punched out for his lunch break at 12:53 p.m. He came back around 1:19 p.m. and asked the receptionist, Alaska Berkenpaf, when he had punched out and she told him. He punched back in even though he could have taken up to an hour for lunch, and then went to the break room and ate his lunch. He had notified Ms. Berkenpaf he intended to go and eat lunch after punching in because he had been working while off the clock. This was because he had not checked with his supervisor or lead man before punching out to see if there was any more work to be done before he left on his lunch. He was summoned back to finish up his work and did not punch in again or talk to his supervisor about how to correct the time clock problem.

Ms. Berkenpaf notified Supervisor Kelly Tompkins and OC Manager Ronett Powell about the situation. An investigation was done and the claimant was interviewed. He admitted to having

his lunch while clocked in because he had been working while off the clock. This was considered falsification of the time records, which is a violation of the employer's policy. Ms. Powell and Mr. Tompkins notified him he was discharged.

Jason Wamberg has received unemployment benefits since filing a claim with an effective date of April 28, 2008.

REASONING AND CONCLUSIONS OF LAW:

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 claimant had been advised his job was in jeopardy as a result of his violation of various company policies. On April 28, 2008, he worked while off the clock and ate lunch while on the clock. This is a falsification of time records, which is conduct not in the best interests of the employer. Mr. Wamberg could have taken an hour for lunch, he could have punched back in when his lead person told him he still had work to do, and he could have asked a supervisor what to do about the fact he had already punched out. There were many options available to him, none of which he elected to take except to punch in and tell the receptionist he was the going to eat lunch. She does not have the authority to approve this type of arrangement.

Mr. Wamberg violated the timekeeping policies of the employer. This is a violation of the duties and responsibilities the employer has the right to expect of an employee. 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 June 6, 2008, reference 01, is reversed. Jason Wamberg 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 \$3,638.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw