

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN HOEPPNER

Claimant

APPEAL NO. 06A-UI-07360-E

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIFTH STREET TIRE INC

Employer

**OC: 06-18-06 R: 03
Claimant: Respondent (1)**

Section 96 5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 11, 2006, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held in Waterloo, Iowa, before Administrative Law Judge Julie Elder on October 2, 2006. The claimant participated in the hearing with Mechanic Steve Adams and Attorney Tim Haymann. David Sand, Store Manager and Sue McLean, Secretary, participated in the hearing on behalf of the employer with Attorney Henry Bevel III. Employer's Exhibits One, Two and Three were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time general service employee for Fifth Street Tire from December 2, 2003 to June 20, 2006. On June 6, 2006, the claimant clocked out for lunch at 12:34 p.m. and clocked back in at 12:35 p.m. On June 8, 2006, he clocked out for lunch at 10:55 a.m. and clocked back in at 10:56 a.m. The claimant admits he took a lunch both days and testified he must have made a mistake on the computer. The bookkeeper noticed the discrepancy and notified Co-owner Steve Sand when he returned from vacation June 19, 2006. The claimant was not paid for the extra time and Mr. Sand told the claimant he was being terminated June 20, 2006, because the employer no longer trusted him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 employer has the burden of proving disqualifying misconduct. 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). While the claimant made a mistake in clocking in and out for lunch June 6 and 8, 2006, there is no evidence that this was a pattern or that he had been warned about the problem in the past. These were isolated incidents that could have occurred accidentally and it seems unlikely the claimant would clock in and out one minute apart when it was obvious to others he took a lunch break. Consequently, the administrative law judge concludes the claimant's actions do not rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The July 11, 2006, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs