

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY W WALDEN
Claimant

APPEAL NO. 10A-UI-09661-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AG PROCESSING INC A COOPERATIVE
Employer

OC: 05-30-10
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 28, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 26, 2010. The claimant did participate and was represented by Dennis J. Mahr, attorney at law. The employer did participate through Joe Kirby, Plant Manager; Rachel Hieronymus, Workers' Compensation Specialist; and Sandy Mason, Corporate Security Manager, and was represented by Alyce Smolsky, of Johnson and Associates. Claimant's Exhibit's One through Five were entered and received into the record. Employer's Exhibits One through Six-b were entered and received into the record.

ISSUE:

Was the claimant discharged due to job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a material handler, full-time, beginning February 6, 2007, through May 27, 2010, when he was discharged.

The claimant was discharged for dishonesty and falsification of mileage claims for aquatic therapy he was receiving due to a work-related injury. The claimant admits he knew he was to be honest when filling out his claim for mileage. In early May 2010 the employer became suspicious that the claimant was falsifying his mileage claims and was not attending aquatic therapy when he said he was. The employer began an investigation, including contacting the Four Seasons Aquatic Center (the location where the claimant had his water therapy) to find out when the claimant had visited the center. The employer then compared the dates of the mileage claims to the attendance records kept by the Aquatic Center. On one hundred and three separate occasions, the Aquatic Center had no record of the claimant visiting the center when his mileage claims indicated he had. When a customer entered the Aquatic Center, they give their membership number to an employee behind the counter and that information is entered into the computer system. On the rare occasions when an employee was not behind the desk, there was a sign in sheet left on the counter for customers to sign in with their account

number. It is clear that the Aquatic Center would want to keep track of who was in the facility to insure that the person coming in was a member and had paid their membership dues. The claimant indicated he most always signed in or gave his name and membership number to the employee working behind the counter.

The Aquatic Center indicated that it would be very unlikely that a person who entered the facility would not be entered into the system over one hundred times. The Aquatic Center also sent a letter indicating that they were closed on August 6, 7, and 8, 2009, for routine general maintenance. The claimant filed a mileage claim that indicated he attended the Aquatic Center on August 7 and 8. It would have been impossible for him to have done so when the facility was closed for business. The claimant testified that he always filled out the mileage claim in his car after attending his therapy session.

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.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

The claimant admits he knew he was obligated to honestly report his attendance at aquatic therapy and his mileage when seeking reimbursement from the employer's workers' compensation carrier. The administrative law judge is persuaded that the claimant did not do so. The claimant could not have attended the Aquatic Center on August 7 and 8, because it was closed. If he was truly filling out his mileage claim in the parking lot after he attended therapy, he would have known he did not attend therapy on those dates. Additionally, the claimant was misrepresenting the mileage he claimed when he attended therapy after work. He was reporting as though he had driven from his home, when in fact he had come straight from the plant directly after work. Lastly, the administrative law judge finds it unbelievable that the Aquatic Center would have one hundred and three occasions of missing the claimant coming into the facility. The claimant falsified documents in contravention of the employer's policy. The employer has established that the falsification of documents and the claimant's dishonesty was in contravention of their policy and is sufficient misconduct to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The June 28, 2010 (reference 01) 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw