

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RAYMOND L WINTERSTIEN**  
Claimant

**APPEAL NO: 10A-UI-04866-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OSCEOLA FOODS CORPORATION**  
Employer

**OC: 02/21/10**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Raymond L. Winterstien (claimant) appealed a representative's March 22, 2010 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Osceola Foods Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 12, 2010. The claimant participated in the hearing. Aaron Peterson appeared on the employer's behalf. During the hearing, Employer's Exhibits One, Two, and Three were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on September 19, 2005. He worked full time as a quality control technician on the second shift in the employer's food manufacturing facility; his normal shift was from 4:15 p.m. to 3:00 a.m., Monday through Thursday. His last day of work was February 22, 2010. The employer suspended him that day and discharged him on February 24, 2010. The reason asserted for the discharge was falsification of a company record.

The claimant's duties included filling in an audit sheet to show the time he finished a check including the number of defects found; checks were completed approximately every 10 to 15 minutes. On the night of February 18 the claimant filled in an audit form indicating that he had completed a check at 10:45 p.m., 10:56 p.m., 11:10 p.m., and 11:23 p.m. When the employer later reviewed this form, it was clear there was a problem, as the claimant had clocked out and gone home sick at 11:07 p.m. The employer concluded that the claimant had intentionally falsified the report.

The claimant acknowledged that he had completed the form with those times. However, he asserts that this must have been because of his condition at the time. The claimant has multiple sclerosis. He occasionally suffers an episode in which he has blurred vision and is disoriented. He experienced an episode while at work on the evening of February 18, which is the reason he requested and was granted permission to leave early sick. He does not have a clear recollection of the circumstances of his filling out the audit form with the later times, but believes he had been confused on the time when completing the form, resulting in the incorrect information being recorded.

There had not been any prior similar issues regarding the claimant.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is his reporting of incorrect information on the audit report. Misconduct connotes volition. Huntoon, supra. The administrative law judge concludes that it is more likely than not that at the time the claimant inserted the incorrect information he was sufficiently disoriented so as to lack the intent necessary to have deliberately made a false report. Under the circumstances of this case, the claimant's inclusion of the incorrect information on the report was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's March 22, 2010 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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