

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELOY MARTINEZ**

Claimant

**APPEAL NO. 10A-UI-09121-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PREMIER SERVICES INC**

Employer

**OC: 01/17/10**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Eloy Martinez (claimant) appealed a representative's June 16, 2010 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Premier Services, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 12, 2010. The claimant participated in the hearing. The employer received the hearing notice and responded by calling the Appeals Section on July 21, 2010. The employer indicated that two persons would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, the employer advised the administrative law judge that it was opting not to participate in the hearing; therefore, the employer did not participate in the hearing. Based on the evidence, the arguments of the claimant, 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 employer is a temporary employment firm. The claimant began taking assignments with the employer on or about August 29, 2009. His second and, to date, final assignment began on January 26, 2010. He worked part-time (approximately 37 hours per week) as a hopper for the employer's Sioux City, Iowa, trash collection client. His last day on the assignment was May 13, 2010. The assignment ended because the business client determined to end it due to a belief the claimant had falsified his time card.

On or about May 11 the claimant had worked until 11:45 a.m. On his time card, he wrote "1:45," omitting a "1" needed to make it "11." He was unaware of having done this until the supervisor confronted him when reviewing the time cards on May 13. The truck driver on the truck the claimant had worked had initialed off on the time card as correct. The claimant had been distracted, as he had just learned a day or two prior that his daughter in Laredo, Texas, was ill and he was in a hurry to go so he could send some money for her to receive medical care.

There had not been any prior similar incident; the only other disciplinary issue had been about a month prior to May 13, on an occasion where the claimant was tardy due to oversleeping.

After being informed by the business client's supervisor that he was being released from the assignment, the claimant reported back to the employer. However, no other work has been available through the employer.

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

The essential question in this case is whether there was a disqualifying separation from employment, here, whether the employer or the business client ended the claimant's assignment and effectively discharged him for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer or client was right or even had any other choice but 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 questions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). 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 section 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).

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 that 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 that 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 or its business client for ending the claimant's assignment is the error he made on his time card. Under the circumstances of this case, the claimant's erroneous entry on the time card 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 June 16, 2010 decision (reference 03) is reversed. The employer did effectively 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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