

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

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**AMENDED**

**Appeal Number: 04A-UI-06443-H2T**  
**OC: 05-16-04 R: 01**  
**Claimant: Respondent (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 1, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 9, 2004. The claimant did participate. The employer did participate through (representative) Mark Campbell, Production Training Manager, and Elizabeth Stough, Plant Controller.

#### FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a yield clerk full time beginning January 16, 2001 through May 17, 2004 when she was discharged for falsifying her time sheets. The employer received complaints from other areas of the company indicating that the claimant was not performing a routine computer function by 5:00 a.m. every morning as was required of her. The employer believed the claimant was performing the function, but when the complaints persisted and others showed Ms. Stough documentation that the function was not being performed in a timely manner, Ms. Stough elected to have the claimant's arrival time at work monitored by the security guards. To enter the work place, the claimant had to walk past a security guard at a security checkpoint each and every morning. The security guard was specifically asked by Ms. Stough to note on the log the exact time the claimant arrived at work from May 11, 2004 through May 14, 2004. On May 11, 2004, security noted the claimant entered the building at 4:58 a.m.; on May 12, 2004, security noted that the claimant entered the building at 4:57 a.m.; on May 13, 2004, security noted the claimant entered the building at 4:58 a.m.; on May 14, 2004, security noted that the claimant entered the building at 4:50 a.m. The claimant's regular start time was 4:30 a.m.

The employer checked the claimant's time sheet and discovered that the claimant indicated she came to work on May 11, 2004 at 4:45 a.m.; on May 12, 2004 at 4:45 a.m.; on May 13, 2004 at 4:30 a.m.; and on May 14, 2004 at 4:30 a.m.

The employer also checked to see what time the claimant's computer was turned on every morning. The claimant turned on her computer at 4:59 a.m. on May 11, 2004; at 4:59 a.m. on May 12, 2004; at 5:04 a.m. on May 13, 2004; and at 4:54 a.m. on May 14, 2004.

The claimant's argument that the clock in her car was off is not credible in light of the consistent number of days the claimant reported late for work and the availability of other clocks, including one on her computer. The claimant was not discharged because she was late to work, but rather because she falsified what time she arrived at work every morning. The security guards' records, in conjunction with the claimant's own computer records, indicate that the claimant was falsifying what time she arrived at work every morning from May 11, 2004 through May 14, 2004.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

#### 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 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).

An employer has a right to expect employees to conduct themselves in a certain manner. The claimant disregarded the employer's rights by falsifying her arrival time at work each day from May 11, 2004 through May 14, 2004. The employer has a right to expect employees to honestly and accurately fill out their time sheets. To falsify a time sheet is to steal time from the employer. Stealing time, as the claimant did here for four days, is substantial misconduct sufficient to disqualify her from receiving unemployment insurance benefits. As such, the claimant is not eligible to receive unemployment insurance benefits.

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.

Because the claimant's separation was disqualifying, benefits were paid to her to which she was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The June 1, 2004, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,373.00.

tkh/smc/b