

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VACLAV J ROZANEK

Claimant

APPEAL NO: 13A-UI-06099-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 04/21/13

Claimant: Respondent (2/R)

Section 96.5-2-a – Discharge

Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's May 13, 2013 decision (reference 01) that concluded Vaclav J. Rozanek (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 28, 2013. The claimant participated in the hearing. Wade Wright appeared on the employer's behalf. 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?

OUTCOME:

Reversed. Benefits denied.

FINDINGS OF FACT:

After a prior period of employment with the prior owner of the employer's business location, the claimant started working for the employer on October 26, 2010. Since about May 2, 2011 he worked full time as first assistant manager at the employer's West Des Moines, Iowa convenience store. His last day of work was April 22, 2013. The employer discharged him on that date. The stated reason for the discharge was dishonesty through falsification of time records.

The claimant had recently been given a suspension for excessive tardiness; the March 25, 2013 warning had advised him that if there were further problems, he at the least would be demoted. The claimant had been under consideration for becoming a store manager at another location; a demotion due to further tardiness would likely have removed him from consideration for such a promotion.

On April 20 the claimant was scheduled to be at work at 5:00 a.m. He did not report to work until 6:30 a.m. A second assistant manager was called in to cover for him until he arrived; when he arrived, he made comments to her and another cook that he did not want them to tell Wright, the manager, that he had been late.

On April 22 the claimant was responsible for reviewing the personnel time records. He went into his own record; for April 20 he had not punched in, so he manually entered a start time of 5:15 a.m., only 15 minutes late as compared to an hour and a half late. When the employer discovered this later that day, it determined that the claimant was seeking to falsify his time records by minimizing his tardiness that day, and to thus escape the next level of discipline. The claimant asserted that he had misentered what he had intended to enter; he claimed that he had meant to enter 6:15 a.m., and had inadvertently hit a "5" instead of a "6." The employer did not find this explanation to be credible, and discharged 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); Iowa Code § 96.5-2-a.

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 administrative law judge agrees that the claimant's explanation of why the time entered was "5:15" is not as credible as the conclusion that he was intentionally attempting to minimize the seriousness of his tardiness on April 20 so as to avoid demotion and the loss of an opportunity for advancement. The claimant's falsification of the time record shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be

recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's May 13, 2013 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of April 22, 2013. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs