

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY N PHILLIPS
Claimant

APPEAL NO. 11A-UI-09281-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

R J PERSONNEL INC
Employer

**OC: 06/09/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 13, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 3, 2011. Claimant participated. Employer participated by Holly Jacobi, account manager. The record consists of the testimony of Holly Jacobi and the testimony of Ashley Phillips.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a temporary staffing agency. The claimant was hired on May 24, 2010. She was first assigned to the Hon Geneva plant on June 1, 2010. That assignment ended and she was assigned to HNI Corporation on June 10, 2010. The claimant worked as a welder on third shift. Her work shift started at 9:00 p.m. Her last day of work was June 16, 2011. She was terminated on June 20, 2011, for falsification of two time cards.

The employer received a time card for pay period ending June 11, 2011. The initial start time was 10:00 p.m. and that start time was scratched out and 9:00 p.m. was entered. Time was also listed for Saturday and Sunday, days the claimant did not work. The client was emailed and it was confirmed that the claimant did not work the days and times indicated. She put down 15 more hours of work than she actually worked and was paid overtime.

The paycheck for the period ending June 19, 2011, showed that the claimant worked on Friday, June 17, 2011. She did not work that day. The employer asked the client about the time card and it was discovered that the supervisor's signature was forged on that time card. The claimant was dismissed by the client on June 20, 2011, when she came to work. She did not return calls to the employer on June 20, 2011, and June 21, 2011.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. One of the most fundamental duties owed to an employer is honesty. An employer can reasonably expect that an employee will work the hours reported on a time card and that time cards will not be falsified. The employer has the burden of proof to show misconduct.

The greater weight of the credible evidence in this case is that the claimant falsified time cards on June 11, 2011, and June 19, 2011. Her testimony that she made an honest mistake is not credible. The first time card violation was for 15 hours and included changes on the start time and writing down time for days not even worked. The second time card violation on June 19, 2011, contains a false entry for June 17, 2011, and the signature of the approving supervisor is

forged. A single wrong entry might be excused as an honest mistake but the pattern here is one of deliberate falsification. This is clearly misconduct. Benefits are denied.

DECISION:

The decision of the representative dated July 13, 2011, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs