

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHEILA A ROSS
Claimant

APPEAL NO. 08A-UI-08217-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AEROSPACE GEARTECH INC
Employer

OC: 02/24/08 R: 02
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Sheila Ross (claimant) appealed a representative's August 28, 2008 decision (reference 04) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Aerospace Geartech (employer) for failure to follow instructions in the performance of her job. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 29, 2008. The claimant participated personally. The employer participated by Vince Basile, President; Bryan Geise, Machinist; Nicholas Sims, Machinist Apprentice; Daryl Stevens, Machinist; Chris Flannery, Machinist; and James Spencer, Machinist. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 2, 2008, as a full-time office manager. On July 18, 2008, the employer became aware that the claimant may be falsifying her time records. He asked other employees to record when the claimant arrived at work. The claimant recorded that she arrived at work earlier than she actually arrived on July 22, 23, 24 and 25, 2008. The employer terminated the claimant on July 31, 2008

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). As persuasive authority, the falsification of an activity log book constitutes job misconduct. Smith v. Sorensen, 222 Nebraska 599, 386 N.W.2d 5 (1986). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

DECISION:

The representative's August 28, 2008 decision (reference 04) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid

wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css