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

JAMES A SIRMAN
Claimant

APPEAL NO: 10A-UI-14131-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE STORES COMPANY INC
Employer

**OC: 09/05/10
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Advance Stores Company, Inc. (employer) appealed a representative's October 4, 2010 decision (reference 01) that concluded James A. Sirman (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 November 29, 2010. The claimant participated in the hearing. Kevin Hamilton appeared on the employer's behalf and presented testimony from one other witness, Noah Hodak. Based on the evidence, the arguments of the parties, a review of the law, and assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, 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 claimant started working for the employer on June 28, 2009. Since February 26, 2010 he worked full time as assistant store manager at the employer's South Sioux City, Nebraska store. His last day of work was September 2, 2010. The employer discharged him on September 6. The reason asserted for the discharge was inappropriately altering his time record.

On August 29 the claimant clocked in at 9:03 a.m., but later altered his clock in time to 8:30 a.m. The employer concluded that the claimant had falsified his time as he did not physically enter the store until he deactivated the alarm at 9:03 a.m. In fact, the claimant had been at the store at 8:30 a.m., but due to a windstorm in the area the prior evening, he had spent a half hour cleaning up debris around the store before entering the store. The claimant and Mr. Hamilton, the store's general manager, had previously routinely adjusted their own time records as needed, but as a result of the questioning some changes made by Mr. Hamilton there had been a verbal discussion sometime in July that proper procedure was that neither of them should be changing their own time records. When confronted about the August 29 alteration, the claimant acknowledged that he made a mistake in not entering the store and clocking in before taking

care of the premises cleanup, and indicated he had not recalled the July discussion at the time he was adjusting the clock in time on August 29. There had not been any prior discipline taken regarding the claimant. However, as a result of the August 29 incident, the employer determined to discharge 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). The question is not whether the employer was right 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 matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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 reason cited by the employer for discharging the claimant is his alteration of his time record on August 29, 2010. Under the circumstances of this case, the claimant's action 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 October 4, 2010 decision (reference 01) is affirmed. The employer did 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

ld/pjs