

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 employed as a full-time salesperson from May 3, 2004 through August 1, 2005. He was discharged for leaving work early while providing false information to the employer and then subsequently falsifying his time card. Many times the employer was unable to reach the claimant after 3:00 p.m. even though he had a work phone. On July 29, 2005, the employer saw the claimant driving in the opposite direction of work. The employer had the office manager call the claimant to find out his location and the claimant falsely stated that he was delivering a bid north of Dubuque. The employer had a meeting and when he completed it, there was a message from the claimant stating he would not be back until Monday. The employer called the client north of Dubuque who reported that the claimant had been there the day before, not that day. The claimant returned to work on August 1, 2005 and falsified his time card to indicate that he got off work at 4:00 p.m. when he actually left right after 2:00 p.m. When he returned to work on Monday, he falsified his time card and documented that he did not stop working until 4:00 p.m. When the employer confronted him, the claimant admitted he was running personal errands and just used poor judgment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

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).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for leaving work early and providing false information as to where he was and then subsequently falsifying his time card to show he worked later than he did. He contends he just used poor judgment but it was not an isolated incident since he provided false statements on two separate occasions. The employer had often been unable to reach the claimant past 3:00 p.m. in the afternoon even though the claimant had a work phone. The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated August 29, 2005, reference 03, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

sdb/s