

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT DAVIDSON
Claimant

APPEAL NO: 08A-UI-04749-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEEF PRODUCTS INC
Employer

**OC: 04/20/08 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Beef Products, Inc. (employer) appealed a representative's May 13, 2008 decision (reference 01) that concluded Robert Davidson (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 2, 2008. The claimant participated in the hearing. Jennifer Stubbs appeared on the employer's behalf and presented testimony from one witness, Rick Wood. 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?

FINDINGS OF FACT:

The claimant started working for the employer on March 29, 1996. He worked full time as a production supervisor at the employer's Waterloo, Iowa beef processing facility. His last day of work was April 18, 2008. He was suspended that day and discharged on April 19. The reason asserted for the discharge was tampering with other employees' time and attendance reports.

On April 16 there was a 10:30 p.m. start up sanitation meeting scheduled for the claimant's shift, which normally started at 11:00 p.m. Several employees were early for their shift but late for the start up meeting. The claimant was near the time clock watching for late comers and when these employees came in the claimant shoed them back to the meeting without having them clock in. Since there was no clock-in for them for their shift, the claimant later manually entered times for them, but entered them as all in at 10:30 p.m.

An employee who came in while the claimant was not at the time clock area and who had clocked in late for the meeting got an attendance point for being tardy. As a result she was given disciplinary action. She complained, asserting that several other persons had also been late for the meeting but had not received points. The employer then pulled surveillance from the time clock area and saw the claimant "shooing" the other employees away from the time clock.

The employer asserted that the claimant had specifically told the employees not to clock in so they would not get attendance points. The employer also claimed that he had not followed the proper procedure for manually entering start times, which should have included going to the surveillance to pull an arrival time. The claimant denied making that statement to any of the employees. He asserted that he shooed the employees away from the time clock because he wanted them to get to the start up meeting as soon as possible and that the next day when he entered start times in for them was not thinking about what time it was when they had come in. He asserted the process he had used to manually enter the employees' times was consistent with the standard he and the other supervisors with whom he worked had followed in the past.

The claimant had not previously been subject to any disciplinary actions.

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 alleged intentionally subverting the employer's time and attendance reporting system. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant told the employees not to clock in so that they would not get attendance points or that he knowingly failed to follow the proper manual entry procedure. The employer relies primarily on second-hand statements from the affected employees; however, without that information being provided first-hand, the administrative law

judge is unable to ascertain whether the employees are credible or whether they might have been influences in making the statements attributed to them. Under the circumstances of this case, the claimant's course of action on April 16 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 May 13, 2008 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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