

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON G HARWARD

Claimant

APPEAL NO: 12A-UI-14550-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLIEDBARTON SECURITY SERVICES LLC

Employer

OC: 10/28/12

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

AlliedBarton Security Services, L.L.C. (employer) appealed a representative's December 6, 2012 decision (reference 01) that concluded Jason G. Harward (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 January 17, 2013. This appeal was consolidated for hearing with one related appeal regarding another claimant, Katherine M. Ringler, 12A-UI-14551-DT. Both the claimant and Ms. Ringler participated in the hearing. Kirsten Rees appeared on the employer's behalf and presented testimony from one other witness, Marc Rath. 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?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on November 8, 2011. He worked full time as a security officer at the employer's Waterloo, Iowa client's location on the third shift. His last day of work was November 2, 2012. The employer discharged him on that date. The reason asserted for the discharge was falsification of information regarding the conducting of rounds.

The security guards are required to carry a hand scanner to scan bar codes at various points on their rounds. The employer asserted that the claimant had on occasion skipped parts of his rounds and had otherwise manually entered the codes into the scanner to make it appear that he had fully completed his rounds and properly scanned all of the codes.

The employer did not have any specific dates or occasions as to when it believed the claimant had done this, but asserted that when questioned on or about November 2 that the claimant had admitted that he had occasionally done so. The claimant testified that when he was questioned on November 2 he had denied the allegations, but that the employer told him it would not accept his denial. The claimant had previously been told that if he denied allegations of wrong doing he would be discharged, but that if he acknowledged some wrong doing he would only be reprimanded. Therefore, he determined to change his denial to an acquiescence; he testified at the hearing that despite his acquiescence in an attempt to save his job, he in fact had not skipped any of the required scanning and had not manually entered any of the codes.

Because the employer concluded that the claimant had skipped actual scanning of some of the bar codes on his rounds, the employer discharged the claimant. There was no record of any prior disciplinary action regarding 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 the conclusion that the claimant had skipped scanning or manually entered bar codes and did not fully complete his rounds, or that he had falsified the information that he had completed the rounds. 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 in fact did not actually scan the codes or that he falsified the information. 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 December 6, 2012 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

ld/pjs