

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK D PTACEK
Claimant

APPEAL NO: 08A-UI-01639-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNIPARTS OLSEN INC
Employer

OC: 01/20/08 R: 04
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Mark D. Ptacek (claimant) appealed a representative's February 8, 2008 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Uniparts Olsen, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 4, 2008. The claimant participated in the hearing. Becky Meyer and Brad Miller, the plant manager, appeared on the employer's behalf. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 11, 2004. He worked as a full-time cutoff operator.

During the course of his employment, the claimant frequently clocked in for work about 30 minutes before his scheduled shift. No one said anything to the claimant until January 22, 2008, when the employer discharged him.

The claimant clocked in early to get his pre-shift duties done. He wanted to make sure he had the necessary material to do his work and receive information from the employee who worked before the claimant. When the claimant checked in early, he was not rushed and sometimes took a cigarette break.

On January 6, 2008, employees told Miller that the claimant was coming in early and standing around. The employer then had supervisors watch the claimant and document when he reported to work and what he did after he clocked in. This investigation revealed that the claimant consistently reported to work about 30 minutes early and did not appear to do much

until he reported to his area by 6:00 a.m. The employer concluded the claimant's actions amounted to theft of time from the employer. The employer discharged the claimant on January 22, 2008.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The facts indicate the claimant checked in early on a consistent basis. Prior to his 6:00 a.m. shift, the claimant performed some job duties so he would be ready to work on his machine at 6:00 a.m. It is surprising that the claimant's supervisor did not say anything to him prior to January 22, 2008. It was not necessary for the claimant to report to work 30 minutes early and the claimant's actions are not condoned. However, it is difficult to establish that he intentionally disregarded the employer's interests when he had done this for some time and no one previously talked to him about this or warned him that his job was in jeopardy if continued this practice. Based on the facts of this case, the facts do not establish that the claimant committed work-connected misconduct. As of January 20, 2008, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's February 8, 2008 decision (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons that do not constitute work-connected

misconduct. As of January 20, 2008, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs