

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID F OLSON**  
Claimant

**APPEAL NO: 06A-UI-08019-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON RETAIL DELI MEATS INC**  
Employer

**OC: 06/25/06 R: 01  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Tyson Retail Deli Meats (employer) appealed a representative's August 1, 2006 decision (reference 01) that concluded David Olson (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 7, 2006. The claimant was represented by Dennis McElwain, Attorney at Law, and participated personally. The employer participated by James Hammer, Human Resources Manager, and Hal Maddox, Night Quality Assurance Supervisor.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct and, therefore, not eligible to receive unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on March 22, 2000, and at the end of his employment was working as a full-time quality assurance technician. The employer warned the claimant that he was supposed to work until the end of his shift because he was paid by the minute. The claimant understood that if he wanted to leave work early, he was supposed to notify his supervisor.

On June 23, 2006, the claimant decided to leave work early to spend time with his grandchildren. He recorded on his timecard that he worked his complete shift until 9:30 p.m. He did not ask permission of his supervisor to leave early, because it might take too much time. A co-worker notified the employer that the claimant left early. The employer paged for the claimant, but the claimant did not respond. Another co-worker responded by saying he saw the claimant pass through the employer's gate at approximately 8:50 p.m. The employer contacted the guard at the gate and the guard confirmed the time.

On June 26, 2006, the employer questioned the claimant about his leaving on June 23, 2006. The claimant admitted to leaving early and recording the incorrect time on his time records. The employer suspended the claimant. On June 27, 2006, the employer terminated the claimant for falsifying his time records.

The testimony of the employer and claimant was inconsistent. The administrative law judge finds the employer's testimony to be more credible because the claimant's testimony contained internal discrepancies.

### **REASONING AND CONCLUSIONS OF LAW:**

For the following reasons, the administrative law judge concludes the claimant was discharged for misconduct and not eligible to receive unemployment insurance benefits.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Falsification of an activity log book constitutes job misconduct. Smith v. Sorensen, 222 Nebraska 599,386 N.W.2d 5 (1986). An employer has a right to expect employees to conduct themselves honestly. The claimant disregarded the employer's right by falsifying his time records. The claimant's disregard of the employer's interests is misconduct. As such, he is not eligible to receive unemployment insurance benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received benefits in the amount of \$3,240.00 since filing his claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

**DECISION:**

The representative's August 1, 2006 decision (reference 01) is reversed. 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 has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$3,240.00.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw