

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES S ANDREWS
Claimant

APPEAL NO: 13A-UI-00106-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 12/02/12
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's December 24, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Bruce Burgess, a representative with Corporate Cost Control, Inc., appeared on the employer's behalf with Chuck Underhill, the store director, testifying on the employer's behalf. During the hearing, Employer Exhibits One and Two were offered. Only Employer Exhibit One was admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in July 2011. He worked full time as the meat department manager. The claimant was on an intermittent leave of absence since July 2012. He returned to work full time on November 5, 2012.

The claimant understands the importance of accurately reporting the time worked. When an employee forgets to punch in, the time clock does not allow the employee to punch out. This results in an employee writing the time the employee reports to work and leaves work.

On November 16, the claimant forgot to punch in when he came to work. It was not unusual for managers to work before they punched in. As managers walked through their department, they could be working. Since the claimant had not punched in on November 16, he had to write on his time card the time he came to work and the time he left. The claimant reported he came to work at 5:30 a.m. and left at 3:40 p.m. (Employer Exhibit One.) When the employer saw this time edit, there were initially no problems.

On November 21, the claimant again forgot to punch in when he came to work. He again wrote in his time. On November 21, he reported he came to work at 5 a.m. and left at 2 p.m. (Employer Exhibit One.) When the employer saw this handwritten time, the employer became suspicious and reviewed the video of the front door to see when the claimant walked in. On November 16, the claimant entered the store at 5:45 a.m. and on November 21 he walked in at 5:40 a.m.

On November 26, when the employer talked to the claimant, the claimant indicated he made an honest mistake when he wrote his time at the end of the day. The claimant wanted to leave work early on November 21, the day before Thanksgiving. When the employer talked to the claimant on November 26, he said nothing about coming in the back door. The back door has a camera, but the employer did not check the back door camera to find out if the claimant came in that door on November 21.

Based on the discrepancy of when the claimant walked in the front door and the time he reported he came to work on November 21, the employer concluded he fraudulently misreported the time he worked. The employer considered a 45-minute discrepancy as flagrant misrepresentation. Even though the claimant's job was not in jeopardy before and there had no previous problems with the way he reported his time, the employer discharged him on November 26, 2012.

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 § 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

Since the claimant did not tell the employer he had come in the back door on November 21, but instead indicated he made an honest mistake, the claimant's explanation on November 26 does not support his testimony at the hearing. As result, the claimant's testimony that he came in the back door on November 21 is not credible.

Since the claimant's job was not in jeopardy prior to November 26 and he had no previous problems of this nature, the claimant was negligent when he reported he came to work at 5 a.m., when the evidence indicates he came in at 5:40 on November 21. Given the fact employees do not make a time edit until the end of a shift, it is possible to write down the wrong time without intentionally disregarding the employer's interests.

The employer established business reasons for discharging the claimant. The November 21 and 16 incidents do not by themselves amount to work-connected misconduct. As of December 2, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's December 24, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of December 2, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs