

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LONNIE E DAVIS**

Claimant

**APPEAL NO: 12A-UI-05478-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ABM JANITORIAL SERVICES NORTH**

Employer

**OC: 03/04/12**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

ABM Janitorial Services North (claimant) appealed a representative's May 1, 2012 decision (reference 01) that concluded Lonnie E. Davis (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 4, 2012. The claimant participated in the hearing. Deneice Norman of Employer's Edge appeared on the employer's behalf and presented testimony from one witness, John Van Kamen. 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 7, 2008. He worked full time on the second shift, 3:00 p.m. to 11:30 p.m., at the employer's Waterloo, Iowa, industrial business client. His last day of work was February 24, 2012. The employer suspended him on that date and effectively discharged him on March 1, 2012. The reason asserted for the discharge was time card fraud.

Sometime prior to February 13, the account manager, Van Kamen, received a complaint from the client that there were occasions that the claimant was to be working that he could not be found on the premises, and that the work was not getting done. He started an investigation on February 13 that included a comparison of entry and exit badge swipes against the time clock records, as well as viewing available surveillance video. Van Kamen determined that there were numerous occasions where the claimant had exited the facility midway during his shift, not returned, but his time clock punches showed a punch out at the normal end of the shift. The

most recent examples he found were that on February 8 the claimant had last swiped out at 8:27 p.m. but was clocked out at 11:23 p.m., on February 9 he last swiped out at 9:18 p.m. but was clocked out at 11:23 p.m., and on February 10 he last swiped out at 7:22 p.m. but was clocked out at 11:23 p.m. Van Kamen watched the video surveillance for one of these days and observed that after the swipe out the claimant did not physically return to the facility. The claimant asserted that he would swipe out and go to his break midway through the shift and go to the hospital to see his mother, and be back within a half hour; this testimony is not credible.

Van Kamen did not alert the claimant to the investigation or to the concerns until February 27, when the claimant came in for work but was sent home on suspension pending final review of the investigation. The employer determined to discharge the claimant because of the time card fraud.

### **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 that 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 that 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 claimant's time card fraud. The claimant's conduct would normally constitute disqualifying misconduct. However, there is no current act of misconduct as required to establish work-connected misconduct. 871 IAC 24.32(8); *Greene v. Employment Appeal Board*, 426 N.W.2d 659 (Iowa App. 1988). The most recent incident in question occurred over two weeks prior to the employer's notification to the claimant of the investigation and of his suspension and effective discharge. 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 1, 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/kjw