

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JOSEPH J MIDDONO
Claimant

APPEAL NO. 19A-UI-02190-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACCESS TECHNOLOGIES INC
Employer

OC: 02/17/19
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Joseph Middono (claimant) appealed a representative's March 11, 2019, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Access Technologies (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 28, 2019. The claimant participated personally. The employer participated by Charlie Kiesling, Director of Human Resources. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 8, 2018, as a full-time telecom field technician. He electronically signed for receipt of the employer's policies just before he was hired. Employees could clock in by using the employer's laptop or by using a mobile app with global positioning device (GPS) on their personal cellphone. The claimant preferred to use the app on his cellphone. Employees certify that their hours are correct when they submit them. Falsifying work hours is a terminable offense.

On January 16, 2019, the employer issued the claimant a ninety-day review and extended his probationary period of employment because he was using the mobile app to clock in when he was not in the office. The employer presented him with a map of the sites from which he clocked in. The claimant did not read the review at the time and did not understand the reason for the increase in his probationary time.

After receiving the review, the GPS log continued to show the claimant using the mobile app clocking in or out while not in the employer's office. This occurred on January 16, 17, 24, 25, February 1, 4, 8, and 12, 2019. The claimant normally went to lunch at Culver's near North Center Point Road and Boyson Road. On February 12, 2019, at 12:47 p.m., the claimant's app

showed that he clocked in to work from lunch at that location. This was approximately two miles from work.

On February 14, 2019, the employer terminated the claimant for falsifying his timecard. The claimant argued he was in the building or on the employer's property each time he logged in. The employer had no other employee who had GPS location issues inside the building.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). As persuasive authority, the 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 follow instructions in the performance of the job. The employer met its burden of proof to show

misconduct. The claimant did not offer any evidence, other than his thoughts, to dispute the employer's testimony. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's March 11, 2019, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs