

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ADAN AREGUIN**

Claimant

**APPEAL NO. 12A-UI-15230-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SDH SERVICES WEST LLC**

Employer

**OC: 11/25/12**

**Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, SDH Services West LLC (SDH), filed an appeal from a decision dated December 18, 2012, reference 01. The decision allowed benefits to the claimant, Adan Areguin. After due notice was issued, a hearing was held by telephone conference call on January 30, 2013. The claimant participated on his own behalf. The employer participated by General Manager Gary Vance.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Adan Areguin was employed by SDH from October 22, 2010 until November 16, 2012 as a full-time maintenance technician. He received a copy of the employee handbook which states it is grounds for immediate discharge if an employee falsifies time records.

On November 8, 2012, it was noted Mr. Areguin's utility truck had been parked by the guard shack for an extended period of time. General Manager Gary Vance checked the log books of the guard shack. These records indicate when an individual left and returned. The time Mr. Areguin left was noted at 11:09 a.m. and returned at 12:11 p.m. Employees are allowed a 30-minute unpaid lunch break. Mr. Vance then checked the "punch exception log" by the time clock. If an employee has any exceptions to the regular time records it should be noted there with an explanation. Mr. Areguin's exception for that date noted a departure of 11:50 a.m. and a return of 12:20 p.m.

Mr. Vance examined records back to October 9, 2012 and found discrepancies on October 9, 12, 15 and November 1 and 8, 2012. It was the same situation with Mr. Areguin's time entries on the exception log showing he was gone less time than the log records in the guard shack.

The employer acknowledged Mr. Areguin had asked him for permission to use his two paid 15-minute breaks to extend the 30-minute lunch break. This is a requirement but it is also

required to note that on the exception log. The claimant failed to do this five times in a one-month period.

After the investigation was concluded the employer consulted with the corporate human resources department and the decision was made to discharge. Mr. Areguin was notified on November 16, 2012.

Adan Areguin has received unemployment benefits since filing a claim with an effective date of November 25, 2012.

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

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 claimant had received the necessary training and policies regarding the keeping of time records as well as the need to record the reason for the exception on the punch log. Obtaining the permission of the supervisor was not the only requirement and he failed to follow through with the necessary documentation. This was not an isolated incident where he might have forgotten to put on the necessary explanation on the exception log, but a series of invalid time recordings. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of December 18, 2012, reference 01, is reversed. Adan Areguin is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css