IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DANIEL B DIXON
Claimant

WAL-MART STORES INC
Employer

APPEAL NO. 11A-UI-10006-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/05/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed a representative's July 15, 2011 decision (reference 01) that concluded Daniel B. Dixon (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 August 22, 2011. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Jennifer Neszger appeared on the employer's behalf. Based on the evidence, the arguments of the employer, 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?

FINDINGS OF FACT:

The claimant started working for the employer on March 6, 2010. He worked part-time (about 27 hours per week) as an electronics associate in the employer's West Des Moines, Iowa store. His last day of work was June 6, 2011. The employer discharged him on that date. The reason asserted for the discharge was falsely altering his work time.

On May 6, 2011, the employer detected that the claimant had twice altered his time records to show he was working when he was not: on April 27, the claimant had arrived moments before and clocked in at 2:46 p.m., and had later gone into the computer time system and had edited his clock-in time to be 2:30 p.m. On May 5, he had arrived moments before and clocked in at 1:39 p.m., and had later gone into the system and edited his clock-in time to be 1:30 p.m. The employer then began more closely monitoring the claimant's time clock reports. The employer found that on May 7 the claimant had clocked in on his return from lunch at 10:13 a.m. and then gone back in and edited the return time to 10:09 a.m. On May 12, he had arrived moments before and clocked in at 1:39 p.m.; he later went into the system and edited the clock-in time to be 1:30 p.m.

The employer received a report on May 21 for the prior week. In that report, the employer found that on May 14 the claimant had arrived and clocked in for work at 4:06 p.m., and had later altered that clock in time to be 4:00 p.m.; on May 17 the claimant had arrived and clocked in at 10:35 a.m. and had later altered that clock in time to be 10:30 a.m.; on May 18 he had returned from break, including an additional restroom break, at 5:38 p.m. but altered that time to be 5:35 p.m., and that on May 20 he had arrived and clocked in at 10:31 a.m. and had altered that clock in time to be 10:30 a.m. The employer reviewed this additional May 21 report with various supervisors and human resources personnel, but did not speak to the claimant until June 6, when it informed the claimant he was being discharged.

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 his alteration and falsification of his time records. Ordinarily, the administrative law judge would consider this sufficient to establish misconduct. However, in this case 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 three weeks prior to the employer's notice to and discharge of the claimant. Therefore, 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 July 15, 2011 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.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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