

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICTOR T JEFFERSON
Claimant

APPEAL NO. 12A-UI-08529-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MATRIX METALS LLC
Employer

OC: 06/24/12
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated July 12, 2012, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on August 9, 2012. The claimant participated. The employer participated by Ms. Linda Leffler, human resource assistant.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Victor Jefferson was employed by Matrix Metals LLC from August 22, 2004, until June 19, 2012, when he was discharged for violation of the company's punch-in/punch-out policy. Mr. Jefferson was employed as a full-time inspector and was paid by the hour. His immediate supervisor was Rob Riddle.

Mr. Jefferson was discharged after he was personally observed by a number of supervisors and the plant's superintendent on June 19, 2012, punching another employee out on the company's timecard system. The claimant was observed punching out a female employee although that employee was not present at the timecard, in violation of company policy.

The employer believed that Mr. Jefferson had been engaging in the practice in the past and therefore had supervisory personnel present to determine if the claimant was violating company policy.

Established company policy prohibits employees from punching other workers in or out and employees are aware that violation of the policy can result in immediate termination from employment. Employees are reminded of the rule periodically by the company re-posting the rule near the timekeeping area.

It is the claimant's position that he believed that he had been authorized to punch the female worker out so that she could continue performing her duties, rather than waiting in line to punch out in the same manner that other employees do. It is the claimant's position that punching the other worker out was, in effect, a benefit to the company because the other employee could continue working longer. It is the claimant's further position that he was discharged because the plant superintendent wanted to have him terminated.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

In this matter, the evidence establishes that the claimant was discharged after a number of supervisors and the plant superintendent personally observed the claimant violating the

company's strict punch-in/punch-out policy by punching another employee out who was not present at the timecard. It appears that the employer believed that Mr. Jefferson was engaging in the practice and therefore observed the claimant to see if, in fact, he was violating the company rule.

Mr. Jefferson acknowledges punching out the female worker, alleging that the female worker was right behind him in line and that he did so only as a "gentlemanly courtesy." The administrative law judge finds the claimant's testimony to strain credibility. Mr. Jefferson asserted that he believed that the practice had been authorized and condoned by company supervisors. The administrative law judge finds the claimant's position with respect to authorization to also strain credibility.

The administrative law judge concludes the claimant knew or should have known, based upon the strict nature of the company's policy with respect to punching employees in and out, that any variation from the policy would not be condoned by company management. Accurate time records, as indicated by the individual worker in punching in and out of work, are essential for an employer, for both pay and liability reasons. The claimant knew or should have known that violating the rule could jeopardize his employment and subject him to discharge from employment.

For the reasons stated herein, the administrative law judge concludes the employer has sustained its burden of proof in establishing the claimant was discharged for willful disregard of a company policy. Unemployment insurance benefits are withheld.

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 issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

DECISION:

The representative's decision dated July 12, 2012, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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