

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STERLING C DANIELS
Claimant

APPEAL NO: 09A-UI-05934-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEHAVIORAL TECHNOLOGIES CORP
Employer

OC: 03/15/09

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Sterling C. Daniels (claimant) appealed a representative's April 7, 2009 decision (reference 01) that concluded he was not 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 May 13, 2009. The claimant participated in the hearing. The employer 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. Based on the evidence, the arguments of the claimant, 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 September 27, 2005. He worked full time as a developmental specialist in group homes in the employer's residential and life skills service for persons with disabilities. His normal schedule was 7:00 a.m. to 3:00 p.m., varied days per week. His last day of work was February 3, 2009. The employer discharged him on that date. The reason asserted for the discharge was time clock violations.

The claimant normally worked at one of the group homes on the east side of Des Moines; he lived on the south side of Des Moines. There were several times since approximately October 2008 where the claimant had been running late to get to work at his assigned group home on the east side, and would stop at one of the employer's other group homes that was en route to his assigned group home and would clock in at that home before continuing on to his assigned group home. At some undetermined time, the employer discovered the claimant had been doing this, and discharged him for in essence falsifying his worked time record. However, it could not be determined when and how the employer learned of this practice, nor was it established when the most recent occurrence had been. While the claimant acknowledged that there was likely an occurrence in December, he was not certain whether there had been an incident in January or February.

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 which 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 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. 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 manipulation of the time clock records. Conduct asserted to be disqualifying misconduct must be both specific and current. Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988); West v. Employment Appeal Board, 489 N.W.2d 731 (Iowa 1992). While the claimant's conduct was inappropriate, it has not been established with specific evidence that the conduct was current. 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 April 7, 2009 decision (reference 01) is reversed. 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/pjs