

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ADAM P HALVORSON**  
Claimant

**APPEAL NO: 09A-UI-04727-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 02/22/09**

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

Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Hy-Vee, Inc. (employer) appealed a representative's March 17, 2009 decision (reference 01) that concluded Adam P. Halvorson (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 April 21, 2009. 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. Tim Speir of Unemployment Insurance Services appeared on the employer's behalf and presented testimony from two witnesses, Rod Hanson and Jeff Deahr. Based on the evidence, the arguments of the parties, 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:**

After a prior period of employment with the employer, the claimant most recently started working for the employer on May 16, 2006. He worked full time as an assistant manager in the kitchen department of the employer's Humbolt, Iowa store. His last day of work was February 23, 2009. The employer discharged him on that date. The stated reason for the discharge was falsification of time records.

On February 22 the claimant was scheduled to work a 5:00 a.m. to 1:00 p.m. shift. Mr. Hanson, the perishables department manager, had passed another kitchen employee who was talking on the phone at approximately 5:20 a.m. and heard that employee ask the claimant if he was coming in to work his shift that day. Later that morning Mr. Hanson observed that the claimant had arrived at work.

Mr. Hanson then checked to see when the claimant had clocked in. The claimant had actually not clocked in, so Mr. Hanson checked the time edit sheet, where employees can record their

times if they fail or make an error in punching in or out. The claimant had written on that sheet that he had reported in for work at 5:01 a.m. The surveillance cameras were then checked, and the claimant had actually arrived for work at 5:28 a.m.

There was also some question about the claimant's time out on February 22; he was done with his work at 1:00 p.m. but did not punch out until 1:30 p.m., and he then wrote 1:35 p.m. on the time edit sheet.

The employer's policies of which the claimant was aware provide that the provision of false time information can result in discharge. The claimant asserted to the employer that he had simply made a good faith error; however, in light of the fact that the claimant had been nearly a half-hour late for work and had to be called by a coworker to remind him of his shift, the employer reasonably concluded that the claimant knew or should have known his manual entry of the 5:01 a.m. time on the edit sheet was false.

The claimant established a claim for unemployment insurance benefits effective February 22, 2009. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$1,440.00.

#### **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); Iowa Code § 96.5-2-a.

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 claimant's provision of false time information shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant

acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Claims Section.

**DECISION:**

The representative's March 17, 2009 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of February 22, 2009. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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