

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RAMON E JACIUNDE**  
Claimant

**APPEAL NO: 11A-UI-03775-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KOHL'S DEPARTMENT STORES INC**  
Employer

**OC: 02/13/11  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Ramon E. Jaciunde (claimant) appealed a representative's February 13, 2011 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Kohl's Department Stores, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 14, 2011. The claimant participated in the hearing. Brian Krieger appeared on the employer's behalf. 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:**

The claimant started working for the employer on February 16, 2008. He most recently worked full time as an hourly operations area supervisor at the employer's West Burlington, Iowa store. His last day of work was February 14, 2011. The employer discharged him on that date. The stated reason for the discharge was false time reporting.

The employer's attendance policy provides for discharge if an employee reaches 15 points. The claimant had received two final warnings for attendance, one on April 19, 2010 and another on December 8, 2010. He had an additional tardy on December 9, 2010.

On February 6, February 7, and February 9 the claimant failed to punch in upon his arrival to work and subsequently manually entered his arrival time on a time edit sheet. Because of the coincidence of the three sequential days of missed punches, the employer reviewed the video surveillance to compare against the time the claimant manually reported his arrival. The employer did not find a discrepancy for February 6, but on February 7 he recorded that he had arrived at 5:35 a.m., while the video showed he arrived at 5:46 a.m., which would have meant he was 16 minutes late for his 5:30 a.m. start, and beyond the grace period allowed for being late. Also on February 9 the claimant had recorded that he had arrived at 5:36 a.m., while the surveillance showed he arrived at 5:42 a.m. The employer determined that the claimant had

falsified his time, presumably in an effort to escape further disciplinary action regarding his attendance, and discharged the claimant.

**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 entry of false information apparently seeking to avoid further discipline regarding his attendance 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.

**DECISION:**

The representative's February 13, 2011 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of February 14, 2011. 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.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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