

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LUKE SKILES

Claimant

APPEAL NO. 14A-UI-00857-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DILLARD'S INC

Employer

OC: 12/29/13

Claimant: Respondent (2)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Dillard's, Inc. (employer) appealed an unemployment insurance decision dated January 16, 2014, reference 01, which held that Luke Skiles (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 13, 2014. The claimant participated in the hearing. The employer participated through Kay Byers, Assistant Store Manager. Employer's Exhibits One through Three were admitted into evidence.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time dock worker from June 4, 2012, through December 28, 2013, when he was discharged for time clock fraud. The employer's work rules require strict honesty "in all dealings with or for the Company." Any act of theft, dishonesty or falsification is not tolerated and that includes record and timekeeping. The claimant arrived at work on December 20, 2013, and could not punch in his time on the time clock because the manager was late and the manager unlocked the area where the time clock is located. The claimant filled out a Time Entry Form to record the time he arrived, which was 6:55 a.m. He completed the entire time entry form including the time out for lunch, the time in from lunch and the time at the end of the shift, even though he had not yet started work. The claimant documented the time at the end of the shift as 8:00 p.m., which is the time he was scheduled to get off work.

It was slow that day and his manager gave him permission to leave early so he left at 7:00 p.m. The claimant did not submit a correction on the following day to reflect that he left an hour earlier than his time entry form.

On approximately December 26, 2013, the assistant store manager was made aware that the claimant had falsified the time he got off work on his time entry form for December 20, 2013. The employer asked the claimant to fill out another time entry form for that same day since it was reportedly misplaced. The claimant filled out a completely new time entry form for December 20, 2013, and he again entered the time he left that day as "8:00" even though he left work that day at 7:00 p.m. The assistant store manager reviewed the surveillance recording from December 20, 2013, and saw the claimant leaving work at 7:00 p.m. The recording showed that he stopped near the time clock before he walked out the door. The employer concluded the claimant intentionally falsified his time records and discharged him as a result.

The claimant filed a claim for unemployment insurance benefits effective December 29, 2013, and has received benefits after the separation from employment in the amount of \$1,110.00. Both the claimant and the employer participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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. 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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on December 28, 2013, for time clock fraud. One of the most fundamental duties owed to an employer is honesty. An employer can reasonably expect that an employee will work the hours reported on a time card and that time cards will not be falsified. The claimant falsified his time on December 20, 2013, and he knew that falsification of time records would result in immediate termination. His excuse that it was a clerical error is not supported by the evidence. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits he has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

In the case herein, a waiver cannot be considered because the employer participated in the fact-finding interview. See 871 IAC 24.10. Its account is not subject to charge and the claimant is responsible for repaying the overpayment amount of \$1,110.00.

DECISION:

The unemployment insurance decision dated January 16, 2014, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,110.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs