

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW D HICKOK
Claimant

APPEAL NO: 13A-UI-06040-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VOLT MANAGEMENT CORP
Employer

OC: 12/23/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Volt Management Corporation (employer) appealed a representative's May 10, 2013 decision (reference 02) that concluded Matthew D. Hickok (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 July 30, 2013. The claimant participated in the hearing. Amanda Clark appeared on the employer's behalf. During the hearing, Employer's Exhibits One, Two, and Three were entered into evidence. 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?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant's first and only assignment with the employer began on May 21, 2012. He worked full time as an inventory analyst for the employer's Waterloo, Iowa business client. His last day on the assignment was April 12, 2013. The assignment ended because the business client determined to end the assignment, asserting that the claimant had falsified his time cards.

The employer ran a comparison between the claimant's time cards and the claimant's badge swipes between January 2 and April 5 and concluded that the claimant had claimed working 365 hours more than were supported by the badge swipes. However, even when the claimant did work on site, there were times he was properly on "paid time" while in transit between two locations but was "swiped out" on the badge system. More significantly, the claimant worked many hours each week from his home. The employer provided at best second hand information

suggesting that the claimant's supervisor with the business client had only authorized the claimant to work from home on three occasions; however, the claimant's first-hand testimony was that his supervisor had told him that the work at home would be authorized so long as the claimant would send the supervisor an email to advise him of his working at home, and that the claimant had sent emails to the supervisor virtually daily to apprise him of his work at home.

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 falsification of his time card. The employer relies exclusively on the at least second-hand account from the supervisor at the business client; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether the supervisor might have been mistaken, whether he is credible, or whether the employer's witness might have misinterpreted or misunderstood aspects of the report. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant in fact falsified his time card. 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 May 10, 2013 decision (reference 02) is affirmed. 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