

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

SHAWN M TIMBLIN  
3508 FLOYD BLVD  
SIOUX CITY IA 51108

WILSEY COMPANY PELLA PROD & SPEC  
3225 HWY 75 N  
PO BOX 924  
SIOUX CITY IA 51102

Appeal Number: 04A-UI-05962-H2T  
OC: 01-11-04 R: 01  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 19, 2004, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on July 21, 2004. The claimant did participate. The employer did participate through Todd O'Brien, General Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a service technician full time beginning January 16, 2004 through May 5, 2004 when he was discharged. The claimant was sent to training on April 26, 2004 in

Pella, Iowa, through April 30, 2004. The claimant left his own home on Sunday, April 25, 2004 to drive down to Pella for the training to begin on Monday morning, April 26, 2004. The claimant was not paid for time he drove to Pella on April 25, 2004. The claimant returned from his week-long training on Friday, April 30, 2004 at approximately 3:15 p.m. The claimant did not fill out his own time card nor did he sign it. He wrote on the time card that the payroll clerk was to see Todd to find out what hours he should be paid while he was away for training. The employer contends that the claimant falsified his time card by seeking eight hours of pay on Friday, April 30, 2004. The claimant was only paid for six hours of time on Friday, April 30, 2004. Gary Schubert, the claimant's direct supervisor, told him prior to his leaving for Pella that when he finished his training in Pella on Friday he was done for the day. At hearing, Mr. O'Brien admitted that there was no work for the claimant to perform at the shop on Friday, April 30, 2004. The claimant did not try to cheat the employer on his time card. When the claimant was asked on May 4, 2004 what time he got home, he said around 4:00 p.m. He just did not remember, he was not trying to cheat the employer out of time. The claimant did not fill out his own time card for the week he was in training.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

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. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such 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. On the other hand 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988).

The claimant never filled out his time card; he merely indicated that the payroll person was to see Mr. O'Brien to see how much he was to be paid. When Mr. O'Brien asked him days later what time he got back from Pella, he just said around 4:00 p.m. The claimant did not intentionally lie to the employer; he did not really remember what time he had arrived home. He was under the belief that he did not have to return to the shop as Mr. Schubert had instructed him otherwise. The claimant had never been disciplined for any similar conduct or behavior.

The claimant drove from Sioux City, Iowa, to Pella on Sunday, April 25, 2004 to attend required training. The employer did not pay the claimant for the time he had to drive on Sunday as their policy indicates that they only pay for driving one way to required training. The employer is reminded here that Iowa Code Chapter 91A, the Wage Payment Collection Act, requires that an employee be paid for every hour worked. Requiring the claimant to drive to remote training on a Sunday is requiring the employee to work. The employer cannot avoid the requirements of the law by writing a policy that is contrary to the law.

The employer's evidence does not establish that the claimant deliberately and intentionally acted in a manner he knew to be contrary to the employer's interests or standards. There was no wanton or willful disregard of the employer's standards. In short, substantial misconduct has not been established by the evidence. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Benefits are allowed, provided the claimant is otherwise eligible.

#### DECISION:

The May 19, 2004, reference 03, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/tjc