

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASON L CHAMBERS
Claimant

HERMAN M BROWN CO
Employer

APPEAL 19A-UI-01349-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/13/19
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the February 8, 2019, (reference 03) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 1, 2019. Claimant did not participate. Employer participated through service Manager Dan Snyder and Chief Financial Officer Troy Johnson. Official notice was taken of the administrative record.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid benefits?
Should benefits be repaid by claimant due to the employer's participation in the fact finding?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on August 1, 2018. Claimant last worked as a full-time shop technician. Claimant was separated from employment on January 10, 2019, when he was discharged.

On January 8, 2019, claimant left work around 10:00 a.m. without punching out or telling anyone he was leaving. Claimant was gone between one and two hours and did not adjust his time card. On January 10, 2019 Snyder asked claimant about the timecard discrepancy. Claimant initially denied being gone. When Snyder began providing more details on where he believed claimant to be, claimant admitted he had left, but insisted it was only for 15 minutes because he needed to go to the courthouse. Snyder testified the courthouse is more than 15 minutes away. The decision was then made to discharge claimant from employment.

This was not the first time claimant had discrepancies with his time card. In December 2018 Snyder met with claimant to discuss two incidents involving issues with his time card. The first

involved a situation in which claimant was gone at an assignment for six and a half hours, when the assignment should not have taken any more than five and a half hours. The second incident involved a situation in which claimant left at 3:00 p.m., but did not clock out until 5:00 p.m. Snyder advised claimant that any further discrepancies with his time card would result in termination, as the employer considered such behavior to be akin to theft.

The claimant filed a new claim for unemployment insurance benefits with an effective date of February 8, 2019, but has not received any benefits to date. Both the employer and the claimant participated in a fact finding interview regarding the separation on February 4, 2019. The fact finder determined claimant qualified for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

Here, the claimant was clocked in and supposed to be working during times when he was not at work. Timecard fraud is theft from the employer. Theft from an employer is generally disqualifying misconduct. *Ringland Johnson, Inc. v. Hunecke*, 585 N.W.2d 269, 272 (Iowa 1998). In *Ringland*, the Court found a single attempted theft to be misconduct as a matter of law. In this case, the claimant deliberately disregarded the employer's interest. The claimant engaged in disqualifying misconduct even without previous warning. Benefits are denied. As claimant has not received any benefits to date, the issues of overpayment and participation are moot.

DECISION:

The February 8, 2019, (reference 03) unemployment insurance decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as 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 issues of overpayment and participation are moot.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs