

**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**

**BENJAMIN HELMICK  
1113 CHALMERS AVE  
WATERLOO IA 50701-3340**

**APAC CUSTOMER SERVICES INC  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283**

**Appeal Number: 06A-UI-06836-HT  
OC: 05/28/06 R: 03  
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, 4<sup>th</sup> 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

STATEMENT OF THE CASE:

The employer, APAC, filed an appeal from a decision dated June 19, 2006, reference 01. The decision allowed benefits to the claimant, Benjamin Helmick. After due notice was issued, a hearing was held by telephone conference call on July 26, 2006. The claimant participated on his own behalf. The employer participated by Human Resources Manager Sue Lester.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Benjamin Helmick was employed by APAC from September 14, 1999 until May 28, 2006. He was a full-time trainer.

On May 25, 2006, another trainer notified Operations Manager Sherry Smith that the claimant was altering his time records on the automatic timekeeping computer system (ATS). Ms. Smith, Human Resources Manager Sue Lester and Site Director Rachel Green investigated by pulling the time records. The records showed there had been overrides on Mr. Helmick's log in or log out times on May 2, 5, 8, 9 and 10, 2006.

The claimant stated he traveled to various locations to train new employees and could not log on to his ATS information screen from remote locations. He would either contact someone in the human resources department to input his start and end times into the ATS on his behalf, or would input the information himself when he returned to his home office.

After the investigation concluded, the claimant was notified by telephone by Training Supervisor Darren Ferko he was discharged.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of his unemployment benefits.

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 to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). In the present case the employer has failed to adequately rebut the claimant's assertions he was unable to fill out his own time records from a remote location, that he notified the bookkeeping department to do the time entry for him while he was traveling and that there were not any specific instructions regarding the ATS which indicated how situations such as this were to be handled.

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Newman v. IDJS, 351 N.W.2d 806 (Iowa App. 1984). The employer has failed to establish the claimant acted willfully, knowingly and deliberately in violation of a known company rule or policy and disqualification may not be imposed.

DECISION:

The representative's decision of June 19, 2006, reference 01, is affirmed. Benjamin Helmick is qualified for benefits, provided he is otherwise eligible.

bgh/cs