

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADRIAN L WILLIAMS
Claimant

APPEAL NO. 06A-UI-10748-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GORDMAN'S
Employer

**OC: 10/08/06 R: 02
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Adrian Williams filed an appeal from a representative's decision dated November 3, 2006, reference 01, which denied benefits based on his separation from Gordman's. After due notice was issued, a hearing was held by telephone on November 27, 2006. The hearing recessed and reconvened on December 1, 2006. Mr. Williams participated personally and Exhibits A through E were admitted on his behalf. The employer participated by Ling Wong, Store Manager, and Jason Robinson, District Manager for Asset Protection. Exhibits One through Seven were admitted on the employer's behalf. The employer was represented by Alyce Smolsky of TALX UC eXpress.

ISSUE:

At issue in this matter is whether Mr. Williams was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Williams was employed by Gordman's from October 8, 2004 until October 12, 2006 as a full-time sales associate. On October 4, 2006, he left the store at 8:51 a.m. and returned at 10:39 a.m. He had to leave for a court appointment. He did not use the time clock when he left or when he returned. To use the time clock, the employee must enter a five-digit number. If the punch is accepted, the machine will beep once and the words "punch accepted" will appear on the time clock's screen. If the punch is not accepted, several beeps will sound and the words "punch not accepted" will appear on the screen. The employer has not had any occasions where the time clock indicated that a punch had been accepted when it had not, in fact, been accepted. Mr. Williams' punch in at the start of his shift and his punch out at the end of his shift on October 4 were both recorded by the system.

On October 4, Mr. Williams punched out at 12:24 p.m. and back in at 12:26 p.m. He was going to take a lunch break but decided against it because of the amount of time he had already missed from work that morning. Because he only clocked out for two minutes, he was questioned the next day as to whether he had taken a lunch break. He indicated he had not but made no mention of the fact that he considered his absence that morning to have been his

lunch break. When confronted by the employer concerning the failure to punch in and out when he left the morning of October 4, Mr. Williams maintained that he had punched out. The employer considered his conduct to be misuse of the time clock and, therefore, discharged him.

REASONING AND CONCLUSIONS OF LAW:

Mr. Williams was discharged by Gordman's. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Williams was discharged for what amounted to theft. He did not clock in or out when leaving to take care of a personal matter. He was gone for one hour and 49 minutes. Had the matter not been caught, he would have received pay for the time he was gone because there was no indication from the time clock that he had been gone.

Mr. Williams contended that he used the time clock when he left and again when he returned. The employer has not had any problems with the timecard misleading employees into thinking that their punch was accepted when it was not. If Mr. Williams had, in fact, used the time clock and his punches were not recorded, the time clock would have alerted him to this fact by a series of beeps and "punch not accepted" would have appeared on the screen. Thus he would have had an opportunity to re-enter his identifying number to make sure the punch was recorded. The fact that his punches at the beginning and end of his shift were recorded suggests to the administrative law judge that there was no problem with the time clock on October 3.

Mr. Williams' failure to punch in and out on October 4 constituted a substantial disregard of the standards the employer had the right to expect. If he had missed punching the time clock either when he left or when he returned, the administrative law judge would be inclined to view the incident as an oversight. However, he failed to punch the time clock on both occasions. This suggests to the administrative law judge that the failure to use the time clock was deliberate. It appears that Mr. Williams did not want to have hours deducted because it might result in him going to part-time status due to not working the number of hours required. For the reasons stated herein, it is concluded that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

DECISION:

The representative's decision dated November 3, 2006, reference 01, is hereby affirmed. Mr. Williams was discharged by Gordman's for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

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