

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW J CHASE

Claimant

APPEAL NO. 14A-UI-06684-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC

Employer

OC: 06/08/14

Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the June 25, 2014 (reference 01) unemployment insurance decision that allowed benefits. After due notice was issued a hearing was held on July 21, 2014. The claimant did participate. The employer did participate through Theresa McLaughlin, Human Resources Manager. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as an assistant market manager beginning on October 17, 2000 through June 4, 2014 when he was discharged.

As an assistant manager the claimant had been given a copy of the policies and was responsible for enforcing the company handbook and policies with regard to the employees that he supervised. The claimant was an hourly employee and his position was covered by the Fair Labor Standards Act. The employer's policy at page eight specifically provides that, "[f]alsifying time (either with greater than or less than actual hours worked) is strictly prohibited." Employees are also put on notice that an "employee is subject to immediate dismissal if they falsify time worked." The claimant was punched in for two hours on May 26 (the store was closed for the Memorial Day Holiday) from 10:24 a.m. until 12:35 p.m. The next day the claimant went into work and changed his time worked to reflect that he had only worked one hour. When he was asked by his manager how long he worked, he indicated it was one hour. The claimant did not tell his manager that he had been in the store for two hours or that he had changed his time punch.

The claimant wrote a statement indicating that he changed his time card because he was not working at 100 percent during the two hours he was in the store. The claimant did not tell the employer about the change he made to his time card, until confronted by the employer telling him they knew he had changed his time card. The claimant had no prior warning about any

similar conduct or behavior. As a manager the claimant was expected to know and enforce the employer's policies. The claimant is not allowed to decide he will work for free. To do so is to expose the employer to liability under the Fair Labor Standards Act, which requires all employees be paid for all hours worked, even if the employee was not 'working at 100 percent.'

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.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). As a management employee the claimant can reasonably be expected to know the work rules. He had received a copy of the employer's handbook and policy book which put him on notice that he was not allowed to alter his time card to falsely reflect what occurred even if it was to reduce his hours. The claimant offered no reasonable explanation as to why he punched in on the time system if he was not working. Under the evidence presented the claimant did work the two hours, but changed his time card to falsely indicate he had worked only one hour. That act is conduct in

violation of the employer's handbook and policy manual and is not in the employer's best interest. Under these circumstances the claimant's conduct is sufficient misconduct to disqualify the claimant from receipt of unemployment insurance benefits. Benefits are denied.

The claimant has not claimed or received any unemployment insurance benefit since his discharge, thus the issue of his overpayment is moot.

DECISION:

The June 25, 2014 (reference 01) 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. Inasmuch as no benefits were claimed or paid, no overpayment applies.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

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