

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

RAYMOND C LEE
671 – 283RD ST
VIOLA IL 61486

ALTORFER INC
2600 – 6TH ST SW
PO BOX 1347
CEDAR RAPIDS IA 52406-1347

Appeal Number: 04A-UI-09252-RT
OC: 08-01-04 R: 12
Claimant: Appellant (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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Raymond C. Lee, filed a timely appeal from an unemployment insurance decision dated August 18, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issue, a telephone hearing was held on September 20, 2004, with the claimant participating. Erik Driessen, Human Resources Manager, and David Hixson, Service Manager, participated in the hearing for the employer, Altorfer, Inc. Employer's Exhibit 1 was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. Bob Franklin and Earl Harvill were available to testify for the employer but not called because their testimony would have been repetitive and unnecessary.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibit 1, the administrative law judge finds: The claimant was employed by the employer as a full-time field service technician from April 10, 1995 until he was discharged on August 2, 2004. The claimant was discharged for submitting a false timecard. On July 29, 2004, the claimant filled in a driving timecard indicating that he started to drive to the job site at 6:45 a.m. and arrived at 7:30 a.m. and then began his working timecard at 7:30 a.m. However, the claimant did not leave for the job site at 6:45 a.m. and did not arrive at the job site at 7:30 a.m. The claimant arrived at the job site at approximately 8:30 a.m. Nevertheless, the claimant did not reflect these times in his timecards. The employer has one timecard for driving and one timecard for working. Each employee is responsible for filling out his or her timecards on a daily basis. On that day the claimant was supposed to be at the job site to start work at 7:30 a.m. but he did not arrive until 8:30 a.m. or thereafter. The employer has a policy in its handbook prohibiting the falsifying of a timecard and providing that such act can result in dismissal. The employer also prohibits dishonest or disgraceful conduct, again allowing for dismissal for such behavior. The claimant received a copy of this handbook, signed an acknowledgement therefore, and was aware of the contents including the prohibition about falsification of a timecard. On July 29, 2004, the claimant was observed driving by a truck stop at 8:10 a.m. and the truck stop was approximately 25 driving minutes away from his job site. The claimant does not deny this.

Previously, on August 14, 2003, the claimant received a verbal warning with a written record for similar behavior when he again falsified a timecard. At that time the claimant had been spotted driving when he was not supposed to be driving and his timecard showed that he was working at the time. When first approached, the claimant said his timecard was accurate but checked his logbook and then conceded that it was not accurate. The claimant then got the oral warning. At that time the claimant was told that he could be terminated for another violation. The claimant had another violation and was discharged.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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 parties testified, and the administrative law judge concludes, that the claimant was discharged on August 2, 2004. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer's witness, David Hixson, Service Manager, credibly testified that while on the way to a meeting, stopped at a truck stop, he personally, along with two colleagues, observed the claimant drive by the truck stop at 8:10 a.m. on July 29, 2004. The claimant's driving timecard for that day showed that he had started driving to the job site at 6:45 a.m. and arrived and began working at the job site and reported this on his working timecard as 7:30 a.m. However, the claimant could not have been at the job site until 8:30 a.m. or later. The claimant had a couple of days to correct the timecard if it had been incorrectly filled out because he did not turn it in until Friday, July 30, 2004. However, the claimant did not correct it. The administrative law judge concludes here that the claimant's incorrect timecard was willful and deliberate. The claimant's testimony to the contrary is not credible. At first, the claimant testified that when he got into his truck on July 29, 2004 and started to leave, it was 6:45 a.m. and he entered this time in both his logbook and the timecard. However, the claimant testified that he got a phone call and went back into the house and then when he exited and re-entered his truck, he only changed the logbook. However, the claimant also testified later that he did not fill out the timecard for that day until Friday, July 30, 2004 when he filled out both timecards. If the claimant had not filled out his timecards until July 30, 2004, he should have seen the correction in his logbook and entered the proper time. Further, even assuming that the claimant had incorrectly but negligently filled out his driving timecard, he filled out his working timecard as starting at 7:30 a.m. However, even the claimant concedes he did not arrive at 7:30 a.m. and the evidence establishes that he could not have arrived until 8:30 a.m. or later. The inconsistencies in the claimant's testimony cast doubt on his credibility and the fact that he had two timecards and both were entered erroneously confirms the administrative

law judge's conclusion that the claimant entered the time willfully and deliberately. Finally, the claimant had previously done the same thing on August 14, 2003 and received a verbal warning informing him that further violations could result in his discharge. Accordingly, the administrative law judge concludes the claimant's behavior here in filling out both the driving timecard and the working timecard incorrectly, were deliberate acts constituting a material breach of his duties and obligations arising out of his workers' contract of employment and evinced a willful wanton disregard of the employer's interest and are disqualifying misconduct. Even assuming that the claimant's testimony is credible and accurate, an assumption the administrative law judge most certainly does not make, the administrative law judge would conclude that the claimant's errors were carelessness or negligence in such a degree of recurrence so as to also establish disqualifying misconduct. To believe the claimant, the claimant was negligent in both filling out his driving timecard and his working timecard after being warned in 2003 for the same behavior and being told that another incident could result in his dismissal. The claimant should have been most careful in doing his timecard.

In summary, and for all of the reasons set above, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision of August 18, 2004, reference 01, is affirmed. The claimant, Raymond C. Lee, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits, because he was discharged for disqualifying misconduct.

pjs/b