

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIM M RAMIREZ
Claimant

APPEAL NO. 07A-UI-01833-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEDONA STAFFING
Employer

**OC: 06/25/06 R: 04
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Sedona Staffing filed an appeal from a representative's decision dated February 12, 2007, reference 03, which held that no disqualification would be imposed regarding Tim Ramirez' separation from employment. After due notice was issued, a hearing was held by telephone on March 8, 2007. Mr. Ramirez participated personally. The employer participated by Colleen McGuinty, Unemployment Benefits Administrator; Julie Dolan, Administrative Assistant; and William Wheatley, New Business Development Manager. Exhibits One, Two, and Three were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Ramirez 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. Ramirez began working for Sedona Staffing on April 17, 2000. His last assignment was with Deere and Company, where he began working full time on August 29, 2006. He was discharged for falsifying his time card.

Mr. Ramirez sent an e-mail to Bill Wheatley on December 21 indicating he had left work that night for 2.5 to 3 hours with no excuse. When questioned, Mr. Ramirez indicated he had not left work during his shift on any other occasions. The employer initiated an investigation, which included viewing the logs detailing when his badge was used at various points within the facility. The employer discovered that there were a number of occasions on which Mr. Ramirez had indicated on his time card that he worked eight hours but had actually worked fewer hours.

Mr. Ramirez worked approximately five hours on December 12 but indicated on his time card that he worked eight hours. He claimed eight hours on his time card for December 15 but actually worked less than four hours. He claimed eight hours for January 2 but only worked slightly over six hours. He claimed eight hours for January 10 but only worked about four hours.

Based on the discrepancies discovered during the investigation, Mr. Ramirez was discharged on January 22, 2007.

Mr. Ramirez filed an additional claim for job insurance benefits effective January 21, 2007. He has received \$324.00 in job insurance benefits for each of the five weeks ending February 24, 2007.

REASONING AND CONCLUSIONS OF LAW:

Mr. Ramirez was discharged from employment. 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. Ramirez was discharged for falsifying his time card. He claimed to have worked more hours than he actually worked. The administrative law judge is not inclined to believe he was told he would be paid for eight hours regardless of the actual number of hours worked.

Mr. Ramirez' movements during his shift were tracked by his badge as he went through various checkpoints. There were occasions such as January 10 when he entered the building through turnstile 9022 at 5:06 p.m. and left through that same turnstile at 5:50 p.m., less than one hour after he arrived. He is not shown entering or exiting any other checkpoint between 5:50 and 9:38 p.m. when he again enters through turnstile 9022. He then remained until 12:35 a.m. on January 11. This means he was away from the premises for approximately 3.5 hours but claimed to have worked eight hours. Employer's Exhibit One identifies other such occasions when Mr. Ramirez left the premises for extended periods of time.

Mr. Ramirez' conduct in claiming more hours than actually worked constituted theft in that he was paid for time he did not work. Theft is clearly contrary to the type of behavior an employer has the right to expect. For the reasons cited herein, it is concluded that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied. Mr. Ramirez has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated February 12, 2007, reference 03, is hereby reversed. Mr. Ramirez was discharged 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. Mr. Ramirez has been overpaid \$1,620.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs