

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**BRETT A MORSS**  
Claimant

**ALLIED BLENDING LP**  
Employer

**APPEAL NO. 18A-UI-11382-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/03/18  
Claimant: Appellant (1)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated November 13, 2018, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on December 6, 2018. Claimant participated personally. Employer participated by Tracy Waterman.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on October 25, 2018. Employer discharged claimant on October 25, 2018 because claimant falsified a time card stating that he'd actually worked during a weekend when he was on-call, when in fact, another co-worker had worked the hours claimant stated he'd worked and the co-worker also claimed working the same hours.

Claimant worked in maintenance for employer. On the weekend of October 20, 2018, claimant was to be on-call. Under company practices that meant that claimant would need to come into work if called to execute repairs. Claimant was never called to come into work that weekend, but another maintenance worker was called to come in as employer needed work done by someone with more experience. Under company rules, the person gets paid for the time worked, and gets paid an additional four hours.

Claimant stated that the co-worker told claimant to go ahead and claim the overtime hours that the co-worker had worked in order to avoid headaches with human resources. Claimant claimed that he'd worked overtime, when in fact, he hadn't worked the hours claimed. The co-worker stated in an affidavit that he worked the hours he too had claimed and further stated that he hadn't told claimant to state he'd worked the hours. The co-worker was not in a position of authority whereby he had any right to give hours to claimant or tell him to claim hours he hadn't worked.

Claimant admitted he'd done this action when confronted.

Claimant had no previous write-ups while working for employer.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The

conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Henry supra*.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning theft of hours on a time sheet.

The last incident, which brought about the discharge, constitutes misconduct because claimant knew that he hadn't worked the hours that he claimed he worked. Claimant did not show that he had any right or authority to claim hours he hadn't worked. The co-worker was not in a position of authority to even tell claimant that he could claim the hours. The action amounts to theft from employer and claimant signed a document stating that he'd worked hours he hadn't actually worked; this is dishonest. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated November 13, 2018, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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