

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

JAMES M DEVINE
28 GEORGETOWN DR
CARY IL 60013

QWEST CORPORATION
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 04A-UI-10581-S2T
OC: 09/05/04 R: 04
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:

James Devine (claimant) appealed a representative's September 27, 2004 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Qwest Corporation (employer) for conduct not in the best interest of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 20, 2004. The claimant participated personally and through Francis Giunta, Union Representative. The employer was represented by Marcy Schneider, Hearings Representative, and participated by Michael Hanna, Lead Security Representative, and Steven Lange, Field Operations Supervisor. The employer offered two exhibits which were marked for identification as Exhibits One and Two. Exhibits One and Two were received into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 14, 2003, as a full-time network technician. On August 7, 2004, the employer received a complaint from a citizen who saw the claimant drinking in the parking lot of a laundromat for more than an hour. The employer's truck was in the parking lot and it contained a global positioning device (GPS). The employer interviewed the citizen and reviewed the GPS records for that day. The employer found the claimant was at the location for some time. Based on the information the employer received the employer decided to investigate the claimant's whereabouts in the past.

The employer obtained the GPS records for June 26 through August 23, 2004, and compared them to the claimant's time records. The employer found the claimant spent a large amount of time at either his home or at bars. On eight of the thirteen days the claimant spent time at these locations, he recorded overtime work for the employer. When questioned about his time at home the claimant told the employer he went home to use the toilet or to provide work for other apartment residents. The employer investigated and found the claimant's rent had been lowered by the landlord because the claimant provided work to the landlord and other residents which was unreported to the company. The claimant denied spending any time in bars or having his rent lowered. The claimant admitted doing work for people without reporting the work to the employer. On September 7, 2004, the claimant was terminated.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons, the administrative law judge concludes he 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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The falsification of an activity log book constitutes job misconduct. Smith v. Sorensen, 222 Nebraska 599, 386 N.W.2d 5 (1986). The employer has established that the claimant was dishonest in his time reporting. Employee dishonesty is contrary to the standard of behavior the employer would have a right to expect. The employer has established that the claimant was discharged for misconduct.

DECISION:

The representative's September 27, 2004 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

bas/tjc