

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**YONG C BANAK**  
Claimant

**APPEAL NO. 07A-UI-06953-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TITAN TIRE CORPORATION**  
Employer

**OC: 06/24/07 R: 02  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Yong Banak, filed an appeal from a decision dated July 16, 2007, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 31, 2007. The claimant participated on his own behalf. The employer, Titan Tire, participated by Human Resources Manager Joyce Kain.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Yong Banak was employed by Titan Tire from July 28, 2000 until June 25, 2007, as a full-time inspector. The employer has posted work rules for employees to read, and one rule strictly forbids one employee to punch in another employee, or to allow another employee to punch them in. On June 21, 2007, the claimant was carpooling with Daniel Sailee, and they were afraid they would be tardy due to being stopped by a train. Mr. Sailee asked the claimant to take his badge and punch him in while he parked his car. Mr. Banak did so.

This was discovered immediately because when Mr. Sailee tried to enter the plant a few minutes later, he was stopped by security for not having a badge, and was taken to the office of Human Resources Manager Joyce Kain. Both Mr. Sailee and Mr. Banak were suspended pending further investigation and a disciplinary hearing was held on June 25, 2007.

At the disciplinary hearing, the claimant admitted Mr. Sailee had asked him to punch in for him and gave the claimant his badge. At the appeal hearing the claimant acknowledged he knew it was against the rules to use someone else's badge to punch them in but thought that only applied when the other person was "at home" and not coming to work, rather than being "right behind" and intending to come to work.

It is the employer's policy to discharge both parties to any event where one employee punches in another employee at the other employee's request. Both Mr. Banak and Mr. Sailee were discharged for the incident.

**REASONING AND CONCLUSIONS OF LAW:**

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.

The claimant was aware of the policy prohibiting any employee from punching in another employee. His assumption this applied only to cases where the other employee was not at work or not intending to come to work was incorrect and not based on any statements from the employer or policies. The employer has the right to protect itself against fraud by prohibiting this activity. The claimant was discharged for conduct not in the best interests of the employer and is disqualified.

**DECISION:**

The representative's decision of July 16, 2007, reference 01, is affirmed. Yong Banak is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw