

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESUS J MARES DAVILA**  
Claimant

**APPEAL NO. 12A-UI-04389-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS  
CORPORATION**  
Employer

**OC: 03/18/12**  
**Claimant: Respondent (2-R)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 11, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 10, 2012. Claimant participated. Kirstie Horton represented the employer. Exhibits One, Two and Three were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Jesus Mares Davila was employed by Cargill Meat Solutions Corporation as a full-time production worker from 2008 until March 21, 2012 when Sarah James, Assistant Human Resources Manager, discharged him from the employment for falsifying his time reporting information on March 20. On March 20, Mr. Mares Davila was scheduled to start work at 5:30 a.m. At 5:43 a.m., Mr. Mares Davila entered the production facility through the turnstile at the guard shack. Mr. Mares Davila had to scan his employee badge at the guard shack to gain entry to the facility. The employer's computer system documented his entry time. Mr. Mares Davila knew he was late for work. Mr. Mares Davila already had 13 attendance points and knew he was subject to discharge if she got a 14th attendance point. Mr. Mares Davila was concerned that his late arrival on March 20 might get him discharged from the employment. Thinking that, Mr. Mares Davila did not use his badge to clock in once he entered the production floor. Instead, at 6:30 a.m., Mr. Mares Davila told his supervisor, Beth Gravett, that he had forgotten to clock in. Ms. Gravett told Mr. Mares Davila to fill out a time adjustment card. When Mr. Mares Davila completed the time adjustment card, he documented his arrival time as 5:29 a.m.

On March 21, Sarah James, Assistant Human Resources Manager, summoned Mr. Mares Davila to a meeting to discuss the discrepancy between the documented time of arrival and the

time Mr. Mares Davila had written on the time adjustment form. Mr. Mares Davila told Ms. James that he had arrived at 5:29 a.m. and repeated that answer when asked a second time. When Ms. James shared the computer record of Mr. Mares Davila's guard shack arrival time, Mr. Mares Davila admitted to knowing that he was late at the time he arrived on March 20. Mr. Mares Davila told Ms. James that he had not wanted to get the half an attendance point he knew he would get for being late.

The employer's work rules regarding disciplinary action included the following: "Dishonesty, falsification, or misrepresentation of compensation/benefit information ... will result in termination of the employment." The rule was contained in the employee handbook provided to Mr. Mares Davila at the time of hire. Mr. Mares Davila was aware of the work rule.

## **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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The evidence in the record establishes that Mr. Mares Davila intentionally falsified a time adjustment form he submitted to the employer for compensation purposes on March 20. Mr. Mares Davila knew at the time he arrived for work that morning that he was late and would get half an attendance point due to the late arrival. Mr. Mares Davila intentionally bypassed the employer time clock mechanism when he got to the production floor. Mr. Mares Davila then intentionally deceived his immediate supervisor by telling her that he had forgotten to clock in. Mr. Mares Davila then intentionally attempted to deceive the employer into thinking that he had been on time by providing a time of arrival that he knew was not accurate. Mr. Mares Davila's conduct was in direct violation of the employer's written work rules and demonstrated a willful and wanton disregard of the employer's interests.

Those portions of Mr. Mares Davila's testimony relating to the allegation of misconduct were lacking in credibility. Mr. Mares Davila's testimony that at 6:30 a.m., he could not recall whether he had arrived for work on time or late within the previous hour was not credible. Mr. Mares Davila's testimony regarding his inaccurate time report being "a mistake" was not credible. The weight of the evidence indicates that the employer caught Mr. Mares Davila in the act of being dishonest and submitting false paperwork and that Mr. Mares Davila admitted the misconduct to the employer immediately before he was discharged from the employment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Mares Davila was discharged for misconduct. Accordingly, Mr. Mares Davila is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Mares Davila.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The Agency representative's April 11, 2012, reference 01, decision is reversed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account will not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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