

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

MICHAEL ROSS  
2247 GRAND AVENUE  
WEST DES MOINES IA 50265

ADVANCE STORES COMPANY INC  
C/o JON-JAY ASSOCIATES INC  
P O BOX 6170  
PEABODY MA 01961-6170

Appeal Number: 04A-UI-02741-DWT  
OC 02/01/04 R 02  
Claimant: Respondent (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, 4<sup>th</sup> 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 are 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Advance Stores Company, Inc. (employer) appealed a representative's March 1, 2004 decision (reference 01) that concluded Michael Ross (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 13, 2004. The claimant participated in the hearing. Lauri Brownrigg, the regional human resource manager, appeared on the employer's behalf. During the hearing, Employer's Exhibits One through Four were offered and admitted as evidence. Based on the evidence, the arguments of the parties,

and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 30, 1991. The claimant worked full time as a store manager. Brian Stewart was the claimant's supervisor. The claimant understood the employer did not allow him to edit any employee's time record without a supervisor's authorization. The claimant also knew the employer paid hourly employees for all time an employee worked.

In early January 2004 an hourly employee, D.V., asked the claimant if he could work as a salaried employee because he wanted to get the warehouse straightened around. The claimant knew D.V. could not become salaried at the claimant's store. D.V. then asked if he could work extra hours and just get paid for 40 hours. The claimant indicated he had no authority to approve such a request and this question should be asked of Stewart.

A short time later the claimant saw D.V. talking to Stewart. The claimant was busy helping a customer and only heard part of the conversation between the two men. The claimant understood D.V. asked Stewart if he could work off the clock. D.V. later told the claimant that Stewart gave him permission to work the extra hours. Stewart told the claimant that as long as both the claimant and D.V. initialed an edited timecard there should not be any problem. The claimant understood Stewart told D.V. he could work off the clock and the claimant had authorization to edit D.V.'s timecard. For the week ending January 17, 2004, D.V. worked over 50 hours but his edited timecard reflected he had only worked 40 hours.

The employer received information on January 20 about the number of hours D.V. worked and the number of hours the claimant reflected on D.V.'s timecard after the claimant edited D.V.'s timecard. When the employer investigated the situation, the claimant admitted he edited the timecard because his supervisor had given him authorization to do so. Stewart did not deny or admit he told the claimant to edit D.V.'s timecard. Even though the claimant had not done

anything like this before and his job was not in jeopardy prior to this incident, the employer discharged the claimant for falsifying an employee's timecard. The employer discharged the claimant on January 29, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established compelling business reasons for discharging the claimant. The employer concluded that even if the claimant had his supervisor's permission to edit D.V.'s timecard to reflect he worked only 40 hours when he actually worked over 50 hours, the claimant knew the employer could not do this and should have contacted a regional manager. Since the claimant followed his supervisor's directions, he used poor judgment when he edited D.V.'s timecard to reflect 40 hours of work the week ending January 17, 2004 instead of the actual hours D.V. had worked. The facts do not establish that the claimant intentionally and substantially disregarded the employer's interests. After his supervisor gave the employee authorization to work extra hours and the employee signed the edited timecard, the claimant believed he was

authorized to edit D.V.'s timecard. Even though the claimant knew he could not grant the employee's request to work hours he would not be paid for, he understood his supervisor could authorize such a request. The claimant made a judgment error when he allowed himself to believe any supervisor would allow an hourly employee to work more than 50 hours but only pay him for 40 even when the employee wanted to do this. Since the claimant did not intentionally disregard the employer's interests, he did not commit work-connected misconduct. As of February 1, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 1, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of February 1, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/