

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONALD T COLEMAN
Claimant

APPEAL NO. 07A-UI-05508-C

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALANIZ LLC
Employer

**OC: 04/29/07 R: 04
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Alaniz filed an appeal from a representative's decision dated May 23, 2007, reference 01, which held that no disqualification would be imposed regarding Ronald Coleman's separation from employment. After due notice was issued, a hearing was held on July 16, 2007 in Burlington, Iowa. Mr. Coleman participated personally. The employer participated by Shelby Trautman, Human Resource Generalist; Dave Washburn, Maintenance Manager; and Justin Burgus, Maintenance Foreman. Exhibits One and Two were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Coleman was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Coleman was employed by Alaniz from August 13, 2002 until April 26, 2007. He was employed full time in maintenance. He was discharged for leaving work without authorization and without clocking out.

Employees are required to clock out whenever they leave the work premises. On April 25, Mr. Coleman left at approximately 1:15 a.m. but did not notify his supervisor that he was leaving. He did not clock out and was gone for approximately 20 minutes. It was not a scheduled break time when he left. When questioned, he told the employer that he had to pick up a lug wrench. He also stated he was taking a late lunch. He also told the employer that someone else had borrowed his vehicle. Mr. Coleman later submitted a "Time Clock Miss Punches" form that is utilized whenever an individual neglects to use the time clock. Mr. Coleman indicated on the form that he overstayed his 10:00 p.m. lunch break by ten minutes on April 25 because he had to go back to Hy-Vee.

Mr. Coleman testified that a week or so earlier, he had borrowed a lug wrench from an acquaintance and had inadvertently left it in the parking lot at Hy-Vee. He further testified that

Hy-Vee contacted the owner of the wrench to advise him that it was at the store. This individual allegedly called Mr. Coleman on April 25 to tell him to retrieve the wrench. Mr. Coleman testified that, when he left at 1:15 a.m., he retrieved the wrench from Hy-Vee and delivered it to the owner. As a result of his unauthorized absence of April 25, Mr. Coleman was discharged on April 26, 2007.

Mr. Coleman filed a claim for job insurance benefits effective April 29, 2007. He has received a total of \$3,340.00 in benefits since filing his claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Coleman was discharged for leaving work without permission and without clocking out. He contended that Brenda, a supervisor, gave him permission to leave.

On the whole, Mr. Coleman's testimony lacked credibility. He testified that he went to Hy-Vee at approximately 1:15 a.m. to retrieve a wrench. However on the "Time Clock Miss Punches" form, he indicated he had gone to Hy-Vee earlier during the shift. If the wrench was simply in the doorway of Hy-Vee, one would have to wonder why he did not see it if he was at the store earlier. He testified that the wrench had his friend's name stamped on it. Moreover, he gave the employer differing accounts of what happened on April 25. He said at one point that he had taken a late lunch and at another point suggested that he had not been the one driving his vehicle when it was seen leaving the work premises. It also seems odd that his friend would call him at 1:00 in the morning to have him retrieve a wrench. The administrative law judge is not inclined to believe that is when Hy-Vee called the friend. Given the above factors, the administrative law judge gives little credibility to Mr. Coleman's testimony. Therefore, it is concluded that he did not have permission from anyone to leave.

Leaving work without permission while still on the clock constitutes a substantial disregard of the standards an employer has the right to expect. It is reasonable for an employer to expect employees to remain on the job site throughout their shift unless permission to leave is granted. Mr. Coleman disregarded those standards. Furthermore, he did not clock out, which meant the employer was paying him for the time he spent on a personal errand. For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has been established. Accordingly, benefits are denied.

Mr. Coleman has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated May 23, 2007, reference 01, is hereby reversed. Mr. Coleman was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten

times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Coleman has been overpaid \$3,340.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css