

**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**

**BRIAN D WEIER  
417 ORCHARD ST  
PO BOX 65  
ALBERT CITY IA 50510**

**K-WEBB INC  
PO BOX 474  
SIOUX RAPIDS IA 50583**

**Appeal Number: 04A-UI-02566-CT  
OC: 01/25/04 R: 01  
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, 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 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Brian Weier filed an appeal from a representative's decision dated March 1, 2004, reference 01, which denied benefits based on his separation from K-Webb, Inc. After due notice was issued, a hearing was held by telephone on March 29, 2004. Mr. Weier participated personally. The employer participated by Jim Wischmeyer, General Manager; Lynn Johnson, Sow Unit; and Tony Rydstrom, Unit Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Weier was employed by K-Webb, Inc. from

December 20, 2002 until January 26, 2004. He worked full time breeding sows and performing other duties as assigned. He was discharged for falsifying his time card.

On January 25, Mr. Weier used the mechanical time clock to punch in at 10:47 a.m. He wrote in that he had reported to work at 7:48 a.m. He would have had to go past the time clock on the way to change his clothes for work. The parking lot where he would park is visible from the road used by other employees as they go from one location to another. Three individuals confirmed to the employer that Mr. Weier's vehicle was not in the lot during the morning of January 25. The person who delivered manure to the facility noted that no one was present when he was there at approximately 8:15 a.m. that morning. When confronted by the employer, Mr. Weier indicated that he had been at work that morning but may have been mistaken as to the time he wrote down. On December 22, 2003, he had told his supervisor that he was not going to punch out for his dinner break because he needed the hours. Because of the time card falsification of January 25, Mr. Weier was discharged on January 26, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Weier was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Weier's discharge was triggered by the fact that he falsified his time card for January 25. His contention that he was, in fact, at work was not found credible. The administrative law judge finds it difficult to believe that he could walk right past the time clock on the way to change his clothes for work and forget to punch in. Moreover, if he had been at work as he claimed, someone would have seen his vehicle in the parking lot. Three different individuals indicated to the employer that his vehicle was not in the lot at the time he claimed to have been working. Furthermore, the person who delivered manure told the employer that no one was there when he made his delivery.

Given the above factors, the administrative law judge must conclude that Mr. Weier was not at work at the time he indicated on his time card. He had told his supervisor in December that he was not clocking out for his dinner break because he needed the hours. It appears to the administrative law judge that he falsified his time card on January 25 because he needed the hours. Falsification of one's time card constitutes theft from the employer as it has the potential of the individual receiving pay that was not earned. Theft from one's employer is clearly contrary to the standards an employer has the right to expect. For the reasons stated herein, the administrative law judge concludes that disqualifying misconduct has been established and benefits are denied.

#### DECISION:

The representative's decision dated March 1, 2004, reference 01, is hereby affirmed. Mr. Weier 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.

cfc/b