

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFF G AKIENS
Claimant

APPEAL NO: 12A-UI-04322-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 01/22/12
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's March 2, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for reasons that do not constitute a current act of work-connected misconduct. The claimant participated in the May 10 and June 4 hearings with his attorney, Matt Reilly. Sabrina Bentler, a Corporate Cost Control, Inc. representative, appeared on the employer's behalf. Steve Barak, the store director; Jane Mohr, a product specialist; and Barb Werner, an assistant manager, testified on the employer's behalf. During the hearing, Employer 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 concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for a current act of work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in November 1982. He began working at Barak's store on September 5, 2011. He worked as a full time manager and human resource representative. As the human resource representative, the claimant's job included completing payroll and editing other employees' timecards when necessary. The claimant worked as an hourly employee and was required to punch in and out on the time clock.

At the previous store, the claimant edited his own timecard and was not required to get a manager's signature. At Barak's store, the claimant could sign off on edited time for other employees, but Barak expected him to get authorization from Barak or another manager when he needed to edit his personal timecard.

On October 27, Mohr told Werner she saw the claimant leave the store at 2:40 p.m. He did not punch out. Mohr did not see him come back to work. The claimant's time card on October 27 indicated he worked 3:30 p.m. to 7 p.m. on October 27. The claimant's timecard was edited on

October 27. (Employer Exhibit One.) Mohr and Werner decided not to say anything to anyone unless either one of them observed another problem with the claimant's timecard.

On November 28, Werner and Mohr both saw the claimant leave at 4:48 p.m. The claimant did not punch out. Later, the claimant's timecard was edited to reflect he left at 5:39 p.m. (Employer Exhibit Two.) On December 1, Barak was told about the two times the claimant had potential timecard edit discrepancies. Prior to December 1, the claimant's job was not in jeopardy.

The claimant went on a leave of absence on December 7. While he was on a leave of absence, the employer investigated the claimant's time card edits for October 27 and November 28. The employer did not notify the claimant that the employer was reviewing his timecard edits for October 27 and November 28. During the investigation, the employer discovered Barak's initials were on the time clock adjustments for the claimant on October 18 and 21. Barak did not initial the sheet and did not remember telling the claimant he could put Barak's initials on the sheet because the claimant had forgotten to punch in. (Employer Exhibit Four.) Even though the employer did not talk to the claimant or give him an opportunity to explain what he had done, the employer decided on December 20 the claimant would be discharged for falsifying the time he worked. On January 19, 2012, while the claimant was still on a leave of absence, the employer informed him he was terminated. (Employer Exhibit Three.)

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).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

Barak learned about potential problems with the claimant's time card edits on December 1. The employer did not notify the claimant that his time edits were being reviewed or that there was any problem with his timecards. The employer decided to discharge the claimant on December 20 for falsifying the time he worked on October 27 and November 28, 2011. This conclusion was based on Mohr and Werner's October 27 and November 28 observations. The employer also noticed that Barak had not signed off or authorized the claimant's time edits. The employer did not say anything to claimant about his timecard until January 19, when the employer discharged him even though this decision had been made a month earlier.

The evidence establishes the employer had business reasons for discharging the claimant. The employer did not ask the claimant for any explanation about his October 27 and November 28 time edits in early December or at any time. Instead, the employer discharged him a month after making the decision to discharge him and about a month and a half after Barak learned about the allegation. The employer discharged the claimant for an incident that does NOT amount to a current act. Since the most recent alleged incident occurred on November 28 and the claimant was not discharged until January 19, it is not necessary to decide if the claimant committed work-connected misconduct. Even if he committed work-connected misconduct, the employer's failure to inform claimant of this allegation in a timely manner and then waiting almost two months to discharge him establish the claimant was not discharged for a current act. As of January 22, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's March 2, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons. The employer did not establish the claimant was discharged for a current act of work-connected misconduct. As of January 22, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw