

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ERIC J BRUNS
Claimant

DUNCAN HEIGHTS INC
Employer

APPEAL 15A-UI-08934-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/12/15
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the August 3, 2015, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 27, 2015. Claimant participated. Employer participated through administrator, Christine Boyken, social worker, and SCL coordinator ,Heidi Hansen, and housekeeper, Gina Francis, and was represented by attorney, Phil Garland. Employer's Exhibits 1 through 4 were received.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a maintenance supervisor from January 2, 2006, and was separated from employment on June 30, 2015, when he was terminated.
In March 2015, an employee informed Christine Boyken that claimant wrote a false clock-in time on his time card. At that time, Boyken was assistant administrator. Boyken reported the incident to the administrator, but no action was taken.

In April 2015, Boyken became employer's administrator. Boyken knew that claimant was arriving much later to work than the time he was writing on his time card on a regular basis.

On June 23, 2015, housekeeper, Gina Francis, saw claimant at the elevator in Hutchins, Iowa during working hours. Francis asked claimant what he was doing in Hutchins, and he stated he was getting a tire fixed. Francis reported the incident to Boyken. Employer investigated and learned claimant was clocked in as working during the time in question, and there was no bill from the relevant vendor for the alleged tire repair.

Boyken also had many complaints that claimant was abrupt and rude when speaking to his subordinate employees and employer's residents. Boyken also felt disrespected by claimant. Claimant received written warnings about being rude and aggressive with co-workers and residents in 2014 and 2009.

Based on the information Boyken had gathered regarding claimant, she discussed terminating his employment with employer's board of directors. Employer's board of director's agreed to terminate claimant's employment. Thus, on June 30, 2015, Boyken terminated claimant's employment.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$2586.00, since filing a claim with an effective date of July 12, 2015, until the week ending August 22, 2015. The administrative record also establishes that the employer did participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Claimant engaged in time clock fraud when he wrote down an arrival time that was earlier than when he actually began working on numerous occasions. Claimant also engaged in time clock fraud when he was present at the elevator in Hutchins, Iowa during working hours for no business reason. Claimant's conduct equates to theft from the company. This is misconduct even without prior warning or specific policy violation.

DECISION:

The August 3, 2015, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as 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 claimant has been overpaid unemployment insurance benefits in the amount of \$2586.00 and is obligated to repay the agency those benefits. The employer did participate in the fact-finding interview and its account shall not be charged.

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Decision Dated and Mailed

cal/pjs