

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES REIMERS

Claimant

APPEAL NO. 08A-UI-01939-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNIPARTS OLSEN INC

Employer

**OC: 01/20/08 R: 04
Claimant: Appellant (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

James Reimers (claimant) appealed an unemployment insurance decision dated February 18, 2008, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Uniparts Olsen, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 14, 2008. The claimant participated in the hearing. The employer participated through Brad Miller, Plant Manager and Becky Meyer, Human Resources Manager. 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:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time machine operator from March 13, 1995 through January 22, 2008. He was discharged for repeated incidents of time theft. The claimant was warned in March 2000 he needed to work until the end of his shift as the records showed he stopped working one hour and 20 minutes before he clocked out. On January 5, 2008 co-employees reported to supervisors that the claimant was clocking in early but was did not begin work until his scheduled start time at 6:00 a.m. The employer began watching the claimant and two supervisors documented him clocking in at 5:26 a.m. on January 7, 2008 when he did not begin working until 6:00 a.m. He clocked in at 5:15 a.m. on January 9 and 5:12 a.m. on January 10 and each day he sat around talking until his shift was scheduled to begin. Also on January 10, he stopped working and running his machine after 1:20 p.m., even though he did not clock out until the end of his shift at 2:00 p.m. He did the same thing on January 11 but stopped working at 1:15 p.m. The employer investigated the matter and discharged the claimant on January 22, 2008.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

871 IAC 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.

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 claimant was discharged for time theft. The employer has documentation that the claimant clocked in early on three days and stopped working early on two days before clocking out. And when questioned about it, the claimant was unable to provide a valid explanation. The claimant's time theft shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated February 18, 2008, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css