

**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**

**JAY J DANIEL
3706 PINE RIDGE CT
APT #305
MOLINE IL 61265-7402**

**ALUMINUM COMPANY OF AMERICA
DAVENPORT WORKS
c/o TALX EMPLOYER SERVICES
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 06A-UI-07939-DT
OC: 07/02/06 R: 04
Claimant: Respondent (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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Aluminum Company of America (employer) appealed a representative's July 25, 2006 decision (reference 01) that concluded Jay J. Daniel (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 23, 2006. The claimant participated in the hearing and was represented by union representative, Charles McGill, who also offered testimony on behalf of the claimant. Jorge Rodriguez appeared on the employer's behalf. During the hearing, Employer's Exhibits One, Two, and Three were entered into evidence. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 23, 1979. He worked full-time as an equipment operator in the plate mill in the employer's Davenport, Iowa works. His last day of work was June 28, 2006. The employer suspended him on that date and discharged him on July 1, 2006. The reason asserted for the discharge was falsification of company records.

The claimant's normal work schedule was 11:00 p.m. to 7:00 a.m. on a rotating seven days on, two days off cycle. He had previously received counseling regarding his attendance, focused on absences, not tardies. He was scheduled to be at work on June 27 at 11:00 p.m. In preparing to drive to work, the claimant had been somewhat delayed due to problems with his car starting. However, he had parked his car in the parking lot very near 11:00 p.m. The employer has a 59-second grace period for clocking in after the set shift start time. Since the claimant knew he was close, he ran quickly from his car to the entrance gate, leaving his wallet with his identification badge in his car in the process.

He went through the gate and past the guard, who did not stop him. Normal procedure is that if an employee enters late, the guard stops the employee and has them sign in. He went past the time clock, which is approximately 15 to 20 steps away from the gate and guard area. He did not stop at the time clock as he realized he did not have his identification badge in order to clock in. He proceeded to his workstation. He obtained a copy of an employee punch exception report form in order to request entry into the payroll system of his "missed" entry punch. He wrote the "time in" as "23:00" (11:00 p.m.) and gave the form to his unit supervisor. The unit supervisor asked the claimant if he had been late, but the claimant denied he had been late, although acknowledging that he had been close.

The unit supervisor then went to the guard to verify the information. Video surveillance of the entrance showed the claimant entering the gate with a time stamp of 23:02:32:906. The guard told the unit supervisor that the claimant "was not all the way thru (sic) the gate when the whistle sounded." The whistle is supposed to sound exactly at 11:00 p.m. (23:00) to mark the change of shift. The whistle does sound for at least a number of seconds, but not a minute.

The employer concluded that the claimant had falsified the punch exception report to conceal the fact that he had been late, which might have resulted in additional disciplinary action on attendance. As a result, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or

2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is the conclusion that he had falsified the punch exception report. It is not necessary to make a determination as to whether the claimant in fact may have been late, but for purposes of this decision the administrative law judge will presume that in fact the employer's time stamp on its video surveillance was substantially accurate, so that the claimant would actually have been about a minute and a half late (after allowance of the 59-second grace period). However, the question here is not whether the claimant was in fact technically tardy, but whether he knew that he was actually tardy when he submitted the punch exception report indicating he was not late. The evidence indicates that the 11:00 p.m. whistle was still sounding while the claimant was entering the gate; he reasonably assumed that the time was right at 11:00 p.m., even if in fact the whistle timing was off from the video surveillance timing. He further reasonably concluded that it would have taken him less than 59 seconds to reach the time clock area after passing through the gate. Therefore, the claimant's entry of "23:00" as his "time in" was made in good faith, not with an intent to falsify. Misconduct connotes volition. Huntoon, supra. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's July 25, 2006 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

ld/cs