

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL SAILEE
Claimant

APPEAL NO. 07A-UI-07148-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TITAN TIRE CORPORATION
Employer

OC: 06/24/07 R: 02
Claimant: Respondent (2)

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Titan Tire, filed an appeal from a decision dated July 20, 2007, reference 01. The decision allowed benefits to the claimant, Daniel Sailee. After due notice was issued, a hearing was held by telephone conference call on August 7, 2007. The claimant provided a telephone number to the Appeals Section. That number was dialed at 10:01 a.m. and the only response was a voice mail. A message was left indicating the hearing would proceed without the claimant's participation unless he contacted the Appeals Section at the toll-free number prior to the close of the record. By the time the record was closed at 10:08 a.m., the claimant had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The employer participated by Human Resources Manager Joyce Kain.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Daniel Sailee was employed by Titan Tire from June 4, 2004 until June 25, 2007, as a full-time buffer. The employer has posted work rules for employees to read and one rule strictly forbids one employee to punch in another employee, or to allow another employee to punch them in. On June 21, 2007, the claimant was carpooling with Yong Banak, and they were afraid they would be tardy due to being stopped by a train. Mr. Sailee asked Mr. Banak to take his badge and punch him in while he parked his car. Mr. Banak did so.

This was discovered immediately because when Mr. Sailee tried to enter the plant a few minutes later, he was stopped by security for not having a badge, and was taken to the office of Human Resources Manager Joyce Kain. Both Mr. Sailee and Mr. Banak were suspended pending further investigation and a disciplinary hearing was held on June 25, 2007.

At the disciplinary hearing the claimant stated Mr. Banak had offered to punch in for him and Mr. Sailee gave him his badge. Regardless of whether the request came from Mr. Sailee or Mr. Banak offered, it is still a rule violation to allow another to use your badge to punch you in.

It is the employer's policy to discharge both parties to any event where one employee punches in another employee at the other employee's request. Both Mr. Banak and Mr. Sailee were discharged for the incident which is in accordance with the disciplinary consequences imposed by the employer in all such cases.

The record was closed at 10:08 a.m. At 10:34 a.m. the claimant returned the call. He had given his cell phone number to participate but left the phone in his car while he was in class at the time the hearing was scheduled.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 claimant had received the company rules and policies which prohibit any employee from punching in another employee. The employer has the right to protect itself against fraud by prohibiting this activity. The claimant was discharged for conduct not in the best interests of the employer and is disqualified.

The claimant's request to reopen the record is denied. He had received the notice of the hearing and knew the time and date it was scheduled. It was his choice to use his cell phone to participate and leaving it in the car while he was elsewhere and could not hear it ring does not constitute good cause to reopen the record under 871 IAC 26.14(7).

DECISION:

The representative's decision of July 20, 2007, reference 01, is reversed. Daniel Sailee is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$668.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css