

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID J MEIER
Claimant

APPEAL NO: 13A-UI-08995-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 07/07/13

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Care Initiativesⁱ (employer) appealed a representative's July 25, 2013 decision (reference 01) that concluded David J. Meier (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 September 10, 2013. The claimant participated in the hearing. Alyce Smolsky of TALX Employer Services appeared on the employer's behalf and presented testimony from two witnesses, Shawn Mikles and Stuart Boley. One other witness, Scott Taugeman, was available on behalf of the employer but did not testify. During the hearing, Employer's Exhibits One and Two 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?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on March 29, 2011. He worked full time as a cook at the employer's Pleasant Hill, Iowa long-term care nursing facility. His last day of work was July 8, 2013. The employer discharged him on that date. The reason asserted for the discharge was alleged falsification of a time punch correction sheet.

The claimant typically worked as a cook five days per week on a 6:00 a.m. to 2:00 p.m. schedule. However, he typically also worked one night per week from about 10:00 p.m. to 3:00 a.m., usually on Wednesdays, cleaning wheelchairs for the environmental services department. Each week when he worked the additional hours he would write his additional shift on the "Time & Attendance Punch Correction Sheet" and make the notation that it was for environmental services, even though he would proceed to punch in and punch out as usual, as

a notification to the accounting department that the billing for the hours was to go to the environmental services department instead of the dietary department.

On the morning of Wednesday, July 3, the claimant had gone ahead and written the hours of 10:00 p.m. to 3:00 a.m. on the "Time & Attendance Punch Correction Sheet." Later that day he spoke to Boley, the supervisor of the environmental services department, and asked him if he really needed to have the wheelchairs cleaned that night, as it was the night before a holiday and the chairs were still clean from the prior week; Boley responded that it would be okay if the claimant did not work that night, and he did not. However, he forgot to remove the time from the "Time & Attendance Punch Correction Sheet." He did not punch in or out for any hours as he normally would for that work. When Boley had asked him on July 5 if he had gone ahead and worked on the night of July 3, the claimant readily reported that he had not. However, because he had not removed the entry from the "Time & Attendance Punch Correction Sheet" by July 8, the employer concluded that he had intentionally falsified the report, and discharged him.

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).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is his failure to remove the hours for cleaning wheelchairs from the "Time & Attendance Punch Correction Sheet" after he learned he would not need to and did not work those hours that night. Under the circumstances of this case, the claimant's failure was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. 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, 2013 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css

NOTE TO EMPLOYER:

To change the address of record, please access your account at:
<https://www.myiowaui.org/UITIPTaxWeb/>.
Helpful information about using this site may be found at:
<http://www.iowaworkforce.org/ui/uiemployers.htm> and
http://www.youtube.com/watch?v=_mpCM8FGQoY