

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RACHAEL K OLSON
Claimant

APPEAL NO. 09A-UI-09880-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE BON-TON DEPARTMENT STORES INC
Employer

OC: 06/07/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 7, 2009, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on July 27, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Jason Ehlers participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a beauty advisor for the employer from September 20, 2004, to June 9, 2009. The claimant received warnings regarding repeated tardiness and absenteeism on February 3, March 4, and May 3, 2009. The May 3 warning stated that failing to improve would result in termination.

On May 27, the claimant punched in 18 minutes late from lunch. The claimant may have been stopped by a customer before punching in. On May 30, the claimant took more than a 25-minute break instead of the 15-minute break allowed. She was on the phone with her divorce attorney. On June 5, the supervisor believed the claimant had taken three breaks because there were three times when the claimant was looked for and could not be found during the day. There were often times when the claimant's duties took her away from the cosmetics department. The evidence does not establish the claimant took three breaks on June 5.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or

omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's repeated tardiness after being warned was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. The phone call with her attorney was a personal matter that should not have cut into her work time. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated July 7, 2009, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css