

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARIA ISABEL LASSWELL**  
Claimant

**APPEAL NO. 12A-UI-03399-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**  
Employer

**OC: 02/26/12**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Maria Isabel Lasswell, filed an appeal from a decision dated March 30, 2012, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on April 18, 2012. The claimant participated on her own behalf. The employer, The University of Iowa (U of I), participated by Benefits Specialist Mary Eggenburg, Application Program Analyst Joanne Higgins, and Facilities Service Coordinator Aaron England. Exhibit One was admitted into the record.

**ISSUE:**

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

**FINDINGS OF FACT:**

Maria Lasswell was employed by U of I from November 29, 2004 until February 24, 2012 as a full-time custodian. She had been disciplined with a five-day suspension for violation of rules in April 2011 and she filed a grievance. The employer and the local AFSCME union entered into a settlement agreement which stated, in part, the next disciplinary action against Ms. Lasswell would be discharge.

On Saturday, February 11, 2012, the claimant was working an overtime shift from 3:30 p.m. to midnight. Her supervisor, Karen Hudson, had assigned her to a particular area she was to clean. Before sending the custodians out to the assignments Ms. Hudson gave each of them a beeper she had personally checked to make sure it was on and working properly.

Around 5:15 p.m. Ms. Hudson received a “stat” call from an area of the building. That meant help was required immediately. The supervisor paged Ms. Lasswell on her beeper, which would send a message in text and the beeper would make a sound announcing an incoming message. The message sent was for the claimant to call the supervisor immediately. She did not. In five minutes Ms. Hudson again paged the claimant with the same message and again there was no

response. Another custodian was assigned to respond to the call and the supervisor went looking for Ms. Lasswell.

The claimant's cart, trash bin and vacuum were found, all in separate areas where she had been assigned, but the claimant herself could not be located. The supervisor went to the area at 5:30 p.m. and again at 6:00 p.m. and the claimant finally returned to her work area around 6:18 p.m. and maintained her beeper was not working. Ms. Hudson checked and the beeper had been turned to "sleep" mode after it had been given to Ms. Lasswell at the beginning of the shift.

The claimant was absent Monday and Tuesday of the next week and Wednesday was her regular day off. When she returned to work on February 16, 2012, she was informed there would be an investigation into the matter of her taking excessive breaks and not being available during work hours. The union was notified and a hearing scheduled for February 20, 2012.

At the investigatory meeting the claimant maintained her beeper "was not working" but could not explain how it was put into "sleep" mode when it had been activated by Ms. Hudson at the beginning of the shift. She also maintained a co-worker could vouch for the fact she had been at work during that time Ms. Hudson could not find her.

The co-worker was identified by the claimant and interviewed by the employer. This co-worker said he had not been with the claimant at all times during the relevant period but when he did finally encounter her, she was sitting in the atrium eating popcorn. She had jumped to her feet when she saw him but when she recognized him, sat back down.

The claimant was notified of the discharge on February 24, 2012, after the investigation had concluded. She was fired for being out of her work area, not responding to the page and for taking an excessive break.

#### **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 been advised her job was in jeopardy if there were any further rule violations. She was represented by a union steward at the investigative meeting and given the opportunity to present her case. After she named a witness on her behalf the employer followed up fully with that witness and he did not corroborate her statement she was working. He saw her sitting and eating popcorn rather than doing her regular job duties.

The employer has the right to expect employees to perform their assigned duties during the time they are on the clock, and, in this case, to keep their beepers turned on so they are available to the supervisor. The claimant turned her beeper from "on" to "sleep" so she could not receive any pages from her supervisor. As a result the "stat" request was delayed and another custodian assigned. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

**DECISION:**

The representative's decision of March 30, 2012, reference 01, is affirmed. Maria Lasswell is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs