

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOANN K HEMANN**  
Claimant

**APPEAL NO. 11A-UI-10581-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FOX RIVER MILLS INC**  
Employer

**OC:07/10/11  
Claimant: Appellant (1)**

Section 96.5-2-A – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated August 2, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 1, 2011. Claimant participated. Employer participated by Nancy Vine, Director of Human Resources, and Sara Christianson, Human Resources Coordinator. The record consists of the testimony of Nancy Vine; the testimony of Joann Hemann; and Employer's Exhibits 1-10.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a textile manufacturer and produces socks at its facility located in Osage, Iowa. The claimant was hired on December 14, 2006. She was a knitter and was a full-time employee. Her last date of work was July 6, 2011. Her termination was effective July 7, 2011.

The claimant was terminated for "excessive missed punches." The employer has a policy, of which the claimant was aware, that an employee is supposed to punch in on a computer when she comes to work. This computer record is essential to the business operations of the employer as attendance; payroll; and benefits are all determined based on hours worked, which in turn depends on employees using the punch in procedure. An employee is given three free missed punches per month. After three missed punches, an employee is then given a warning. Five warnings in the progressive discipline process leads to termination.

The claimant was terminated for excessive missed punches. The final missed punches were on June 29, 2011; June 30, 2011; and July 1, 2011. The claimant's written warning for these missed punches was her seventh written warning. The employer had given the claimant two additional chances by not terminating her on the fifth warning. The claimant had been given

previous written warnings for missed punches on May 23, 2011, and June 1, 2011. The employer asked the claimant how it could help her make sure she did her punches. The claimant had no suggestions. The claimant knew her job was in jeopardy. She was specifically informed on June 1, 2011, that if she had any more missed punches that she would be terminated.

### **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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. An employer is entitled to make and enforce rules on timekeeping procedures and can reasonably expect that an employee will follow those procedures. The employer has the burden of proof to show misconduct.

The evidence in this case established that the claimant had repeated excessive violations of the employer's rule on punching in. The employer required all of its employees to punch in prior to starting work. The employer used these punches to determine attendance; payroll; and benefits. When an employee did not punch in, it was necessary for attendance and payroll to do time consuming follow-up. The claimant was warned on two occasions that she needed to punch in. On June 1, 2011, the claimant was given written warning and was specifically told that if she failed to punch in, she would be terminated. She knew her job was in jeopardy and that the employer felt that the punch in process was important.

Despite this knowledge, the claimant had three more violations of the punch in rule on June 29, 2011; June 30, 2011; and July 1, 2011. The pattern in this case is not one of occasional forgetfulness but rather wanton carelessness on the claimant's part. She testified that her actions were not intentional. However, the violations of the punch in policy are so numerous that the claimant's belief is not reasonable. She knew she had to punch in and her statements to the employer that she did not see why this was so important, show that she was not taking seriously a policy that she knew she should take seriously. The administrative law judge concludes, therefore, that the claimant's actions constitute misconduct. Benefits are denied.

**DECISION:**

The decision of the representative dated August 2, 2011, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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