

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JILL R MATTHEWS

Claimant

APPEAL NO: 11A-UI-16331-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ASSISTED LIVING CONCEPTS INC

Employer

OC: 11/13/11

Claimant: Respondent (2\R)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's December 12, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant did not respond to the hearing notice or participate in the hearing. Barb Blair, the residents' director, appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in February 2011. She worked as a part-time cook. The claimant had a habit of failing to clock in or out for breaks and taking more than an hour for a lunch break. On November 9, Blair talked to the claimant about clocking in and out for breaks. When the claimant did not clock in or out for her break, it appeared that she never took a break. Blair reminded the claimant during the November 9 meeting that if she forgot to clock in or out, she needed to complete an E-Time Exception form. These forms were next to the time clock. Blair also emphasized that the claimant had to clock in and out when she took a break.

The employer's written policy that the claimant received informs employees they cannot work off the clock. Also, if an employee falsifies her timecard, the employee will be terminated.

After the November 9 meeting, the claimant's morning did not go well. Instead of leaving at 1:30 p.m. for a lunch break, the claimant hurriedly left around 1:45 p.m. When the claimant left for her lunch break, she did not have her dishes done. The claimant left because her husband was there to pick her up for lunch. The claimant forgot to punch out on the time clock when she left. The claimant returned to work about an hour later. She then remembered she had forgotten to punch out for lunch. Instead of completing an E-Time Exception form, the claimant

punched out at 2:54 p.m. and punched back in at 3:56 p.m. The claimant worked during the time her time card reflected she was punched out.

The employer discharged the claimant on November 14 because she falsified her time card. Instead of completing the E-Time Exception form, the claimant punched out for an hour, but not the hour she was on break. The claimant told the employer she did this because she did not want to get in trouble for not punching out when she left for her break.

The claimant established a claim for benefits during the week of November 13, 2011. She has filed for and received benefits since November 13.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew or should have known, the employer did not allow employees to work off the clock. Also, the claimant should have known if an employee falsified her time clock record, the employer would discharge her. The employer had talked to the claimant the morning of November 9 about clocking in and out for her breaks or completing an E-Time Exception form when she forgot to clock out. The claimant's decision to clock in and out to show she had been on break on November 9 amounts to a substantial disregard of the employer's interests. The claimant falsified her time card to make it appear she had clocked out for her break, when in reality she forgot to clock out when she left at 1:45 p.m. If the claimant had completed an E-time Exception report as Blair directed her to do when she forgot to punch out, the employer would not have discharged her. Instead, by punching out at 2:54 p.m. and punching back in at 3:56 p.m. while she worked during this time, the claimant falsified her time record. The employer established that the claimant committed work-connected misconduct. As of November 13, 2011, the claimant is not qualified to receive benefits.

An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment of benefits she has received since November 13, 2011, will be remanded to the Claims Section to determine.

DECISION:

The representative's December 12, 2011 determination (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of November 13, 2011. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs