

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMBER TROSTEL
Claimant

APPEAL NO. 07A-UI-07950-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

U S A HEALTHCARE - NEWTON
Employer

OC: 07/08/07 R: 02
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

U S A Healthcare – Newton (employer) appealed a representative’s August 10, 2007 decision (reference 01) that concluded Amber Trostel (claimant) was qualified to receive unemployment insurance benefits, and the employer’s account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties’ last-known addresses of record, a telephone hearing was held on September 4, 2007. The claimant participated in the hearing. Pat Wiltfang, the administrator, and Mary Haggard appeared on the employer’s behalf. 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:

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

FINDINGS OF FACT:

The claimant started working for the employer on June 23, 2003. The claimant worked as a full-time housekeeper. When the claimant began working, she received a copy of the employer’s policies. The claimant understood that if she left work during a shift without punching out and without permission, the employer would discharge her.

Prior to July 4, 2007, the claimant’s job was not in jeopardy. Previously when the claimant was punched out for a lunch break, she sometimes went to McDonalds for food. On July 4, the claimant was hungry around 8:30 or 9:00 a.m. Another housekeeper was also hungry. The claimant decided to go to McDonalds to get some food for both of them. She was gone about ten minutes. The claimant did not think about punching out when she left and went to McDonalds. The claimant’s supervisor was not at work and nurses were so busy that the claimant did not stop to let them know she was going to McDonalds for a “food run.” The claimant told a co-worker she was going to McDonalds. When the claimant came back from McDonalds no one said anything to her.

On July 9, another co-worker told the employer what the claimant had done on July 4. Based on the employer’s policy, the employer completed the claimant’s termination papers. When the employer told the claimant she was discharged for what she had done on July 4, the claimant did not say anything.

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. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

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).

On July 4, the claimant did not think when she went to McDonalds. Even though she knew about the employer's policy about not leaving the workplace while punched in, she did not think about it when she left and went to McDonalds. Since the claimant had no previous issues of a similar nature, the claimant could have easily forgotten the employer's policy on July 4. Given the fact the claimant worked four years for the employer, this isolated incident does not rise to the level of work-connected misconduct. The employer discharged the claimant pursuant to the employer's policy, but the claimant did not commit work-connected misconduct. As of July 8, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's August 10, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of July 8, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw