

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANNE M SULLIVAN**  
Claimant

**APPEAL NO: 14A-UI-06706-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QWEST CORPORATION**  
Employer

**OC: 06/08/14**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Anne M. Sullivan (claimant) appealed a representative's June 24, 2014 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Qwest Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 22, 2014. The claimant participated in the hearing. The employer's representative received the hearing notice and responded by sending a statement to the Appeals Section indicating that the employer was not going to participate in the hearing. 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:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Reversed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant started working for the employer on July 24, 2006. She worked full time as a customer service sales representative at the employer's Sioux City, Iowa call center. Her last day of work was June 9, 2014. The employer discharged her on that date. The reason asserted for the discharge was tardiness in returning from lunch.

The claimant had previously been given a warning for tardiness after an incident where she was delayed in clocking in by her supervisor who was speaking to her. The claimant had previously worked a schedule of 7:55 a.m. to 4:25 p.m. with a half hour lunch. She had been off work most of the months of April and May due to illness. As the claimant was preparing to return to work, the employer's scheduler suggested that she modify her hours to be 7:55 a.m. to 4:55 p.m. with an hour lunch, to allow for time for some follow up doctor's appointments, and the claimant agreed.

The claimant's first day back to work was June 2. On that day she proceeded to take the hour lunch as she understood the new schedule was to be. However, she and the scheduler had forgotten that the employer had an unwritten rule that lunch breaks on Mondays could not be longer than a half hour. As a result, when returned after taking the hour lunch on June 2, she was deemed tardy. As a result of this incident after the prior warning for tardiness, the employer discharged the claimant.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her late return from lunch on June 2. Under the circumstances of this case, the claimant's return after an hour rather than a half hour that day was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's June 24, 2014 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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