

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JALENE A BOLEYN
Claimant

APPEAL NO. 07A-UI-00464-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NATIONAL MGMT RESOURCES CORP
Employer

**OC: 12/10/06 R: 04
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jalene Boleyn filed an appeal from a representative's decision dated January 4, 2007, reference 01, which denied benefits based on her separation from National Management Resources Corporation (NMRC). After due notice was issued, a hearing was held by telephone on January 29, 2007. Ms. Boleyn participated personally and offered additional testimony from Joan Dougherty. The employer participated by Mike Morrissey, Director of Physical Plant.

ISSUE:

At issue in this matter is whether Ms. Boleyn was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Boleyn was employed by NMRC from November 24, 2003 until December 14, 2006. She worked full-time as a housekeeper at Iowa Wesleyan College. On December 13, 2006, she returned from lunch and clocked in at the physical plant at approximately 12:00 noon. Because of complaints of work not being completed, Mike Morrissey, Physical Plant Director, decided to follow her and others as they returned to their assigned building. The group arrived at the building at approximately 12:04 p.m. and went directly to the break room. Supplies they used in performing their duties were also stored in the area. The group of three housekeepers remained in the break room until approximately 12:20 p.m., when Mr. Morrissey entered the room and sent them home. During the interim, he had walked around to other parts of the building before returning to the break room area. Ms. Boleyn was discharged on December 14, 2006. The above incident was the sole reason for the discharge.

The group of housekeepers were discussing how they were going to divide up the work for the remainder of the day. Their supervisor had instructed them to decide among themselves who would be responsible to clean which areas. When Mr. Morrissey was observing the group, he had been unable to overhear their conversation.

REASONING AND CONCLUSIONS OF LAW:

Ms. Boleyn was discharged from employment. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Boleyn was discharged because she and two coworkers were in the break room for 15 minutes after they returned from lunch. The employer was unable to offer evidence to refute her contention that they were discussing a work-related matter as Mr. Morrissey did not overhear their conversation. The employer did not offer evidence to refute the contention that the group had been directed by their supervisor to decide for themselves how to divide the work.

It appears that the group may have taken longer than usual to decide the workload on December 13. However, the employer's evidence fell short of establishing that the conduct constituted "loafing" or taking an unauthorized break. There was no evidence that Ms. Boleyn neglected her assigned work or that she had been found sitting when she should have been working on other occasions. The administrative law judge concludes that the conduct of December 13 is not sufficient to establish a substantial disregard of the employer's interest as is required for a misconduct disqualification. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). At most, it establishes an isolated instance of poor judgment, which is not misconduct within the meaning of the law. See 871 IAC 24.32(1).

While the employer may have had good cause to discharge Ms. Boleyn, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated January 4, 2007, reference 01, is hereby reversed. Ms. Boleyn was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css