

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RITA R VAN VEEN

Claimant

APPEAL NO. 10A-UI-17217-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROBERT A LEE MD PC

Employer

OC: 10/10/10

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 17, 2010, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on February 2, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness with a witness, Kris Parlee. Melissa Parker participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a receptionist for the employer from June 1, 2010, to October 11, 2010.

The employer discharged the claimant because she had left work at 4:40 p.m. on October 6 but had recorded 5:00 p.m. on her timecard. On October 7, the claimant had went to the restroom at about 11:50 a.m. and since there was no one in the office, forwarded the phone to voice mail. The claimant accurately reported she had left for lunch at noon on October 7 but the employer believed the claimant had left for lunch early because a call to the office transferred to voice mail. The employer believed the claimant was overstating her time.

The claimant had been trained by the previous receptionist that there would be times when there was no work late in the afternoon and she could close the office early but could record 5:00 p.m. on her timecard. This had been the instruction given to the former receptionist by the office manager. This was allowed because there were times when work tasks were performed after 5:00 p.m. or during lunch, but the employer instructed employees not to add time for these tasks on the timecard. The claimant reasonably believed based on this training that what she had done was proper.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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 substantial and 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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified credibly and her testimony was corroborated by her witness. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated December 17, 2010, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css