

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONNA TOWNSEND**  
Claimant

**APPEAL NO. 08A-UI-06481-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SHORE MOTOR CO**  
Employer

**OC: 06/15/08 R: 01  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Donna Townsend (claimant) appealed an unemployment insurance decision dated July 10, 2008, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Shore Motor Company (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 29, 2008. The claimant participated in the hearing with friend Becky Walker. The employer participated through owner Larry Shore. 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:**

The issue is whether the employer discharged the claimant for work-related misconduct

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed beginning May 26, 1998, and was most recently working as a full-time receptionist/cashier. She was discharged on June 17, 2008 based on a final incident of leaving work and not punching out on the time clock. The employer said the claimant left work on June 17, 2008 for a personal errand and was gone about 45 or 50 minutes. The claimant admits leaving for a personal errand but denies the length of time she was gone. She testified that since the employees in the office do not get breaks, it was standard practice to ask each other to cover for them while they ran a quick personal errand. The other incident on which the employer based the discharge occurred in December 2007 when the claimant charged work done on her car that went above her personal line of credit with the employer. She had a credit limit of \$500.00 and the repair work charged was over \$2,000.00. Before an employee can charge an amount above their credit limit, they must obtain prior authorization. The employer testified he issued a written warning to the claimant on January 3, 2008, but the claimant denies seeing it. The claimant admitted she was wrong to have charged an amount above her credit limit, but she said that all the employees do that and she did not think it was a problem since money was coming was already being deducted from each paycheck she received.

## REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such 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. On the other hand 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.

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 claimant was discharged for leaving work for an unauthorized break and not punching out on the time clock. She testified her actions were common practice in that employment setting. She also charged more on her charge account with the employer in December 2007, and this was the second factor in the determination to discharge her. The claimant considered that she was giving the employer more business and that there was no risk on the employer's part since

the payments were being taken out of her paychecks. Misconduct must be substantial in nature to support a disqualification from unemployment benefits. Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1982). The focus is on deliberate, intentional, or culpable acts by the employee. Id. The employer has failed to establish any wrongful intent by the claimant, and considering that she was a long-term employee, the employer's actions appear overly harsh. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

**DECISION:**

The unemployment insurance decision dated July 10, 2008, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw