

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LORI L KINSELLA**  
Claimant

**APPEAL NO. 08A-UI-07590-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST ASSET MANAGEMENT INC**  
Employer

**OC: 02/17/08 R: 02  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated August 18, 2008, reference 04, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on September 8, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Sue Reed participated in the hearing on behalf of the employer with a witness, Heidi Krizek.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a validation worker from April 7, 2008, to July 16, 2008. Her work involved auditing insurance claims. Sue Reed was her supervisor. The claimant was informed and understood that under the employer's work rules, falsification of time records was grounds for termination.

Near the beginning of June 2008, the claimant had reported to management that a coworker, Brian Walker, was sexually harassing her. When Walker was interviewed, he alleged the claimant left her desk for extended period of time and when she returned she would clock out for lunch, stay at her desk, and clock back in to work.

Reed investigated this allegation and concluded the claimant had misreported her work hours on June 19, June 24, July 1, and July 14, 2008. Reed based her conclusions on some personal observations, a production report generated by a program that tracks when employees are entering keystrokes on the computer, the Kronos time entry system, and a badge swipe report generated when employees enter doors at the business.

On June 19, the keystroke report showed no activity from 11:48 a.m. to 1:29 p.m. The Kronos report showed the claimant had punched out for lunch from 1:29 p.m. to 2:01 p.m.

On June 24, the claimant punched out for lunch at 1:04 p.m. She forgot to punch back in when her lunch break ended at 1:30 p.m. When she recognized her error, she punch in at 2:03 p.m. and sent an email to Reed asking for an adjustment to her time. The keystroke report showed no keystroke activity from noon to 12:52 p.m.

On July 11, the claimant's computer was not working at the beginning of the day. Reed denied her request to log in on another computer and instructed her to report her time to Reed for the day. The claimant sent an email to Reed in the morning asking her to log her in at 6:05 a.m. Reed decided to wait until July 14 to enter the claimant's time. On July 14, the claimant sent a reminder email to the Reed stating she had come in at 6:00 a.m., took lunch from 1:00 to 1:30 p.m., and left work at 3:15 a.m. Reed reviewed the badge swipe report that showed the claimant entered her work area at 6:07 a.m. and the keystroke report that showed no keystroke activity from 12:15 to 1:03 p.m.

On July 14, she and the employee relations representative, Lori Knight, had a telephone meeting set up to discuss the sexual harassment complaint. The claimant left her work area to go to a private conference room at about 12:15 p.m. Reed saw her leave. The phone conference lasted about 45 minutes. The claimant returned to her desk and punched out for lunch from 1:03 to 1:42 p.m. The keystroke report showed no keystroke activity from 12:13 to 1:03 p.m.

The claimant had work tasks including meetings and telephone calls that would not be reflected on the keystroke report since it would not involve computer activity. She also was permitted to take lunch at her desk and was not prohibited from using her computer while she was on breaks or lunch, which could account for the keystroke report activity. The claimant was never counseled about her time reporting practices. The claimant never deliberately misstated her time.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

#### **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 the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. The employer has failed to meet its burden of proving the claimant falsified her time. I believe the claimant's testimony about the final incident, which undercuts Reed's testimony. On July 11, the time discrepancy that Reed emphasizes was obviously due to the claimant making a best estimate of her arrival at work when she was not able to log in on her computer. It is unremarkable that she was a few minutes off from her badge swipe time. There are other reasonable explanations for the lack of keystroke activity and the reports do not prove the claimant was loafing or not engaged in some work-related activity.

The employer's account is not presently chargeable for benefits paid to the claimant, since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

**DECISION:**

The unemployment insurance decision dated August 18, 2008, reference 04, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw