

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

CATHY R MARDESEN
411 LOCUST ST
ANITA IA 50020

FIRST AMERICAN REAL ESTATE
SOLUTIONS LLC
FIRST AMERICAN NATIONAL DEFAULT
OUTSOURCING
c/o TALX UCM SERVICES
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-02374-DT
OC: 01/23/05 R: 01
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

First American Real Estate Solutions, L.L.C. doing business as First American National Default Outsourcing (employer) appealed a representative's February 28, 2005 decision (reference 01) that concluded Cathy R. Mardesen (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 24, 2005. The claimant participated in the hearing. Chris Derkas of TALX UCM Services appeared on the employer's behalf and presented testimony from one witness, Karen McConnell. 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?

FINDINGS OF FACT:

The claimant started working for the employer on June 23, 2003. She worked full time as a claims processing clerk doing processing of mortgage foreclosures and bankruptcies in the office of the employer's Des Moines, Iowa business client. Her last day of work was January 19, 2005. The employer discharged her on January 20, 2005. The reason asserted for the discharge was falsification of time records.

The claimant had had the same on-site supervisor for the majority of her employment with the employer. That supervisor was dismissed on or about January 4, 2005. A new on-site supervisor took over the account on or about January 10, 2005. When the new on-site supervisor took over, one of the business client supervisors expressed concern to the new on-site supervisor that there were discrepancies between the times the claimant actually arrived at work and the times reported on her time sheets. On January 13, 2005, the new on-site supervisor reported this concern to Ms. McConnell, the employer's human resources generalist. A report was prepared to compare the claimant's time sheet start time to her building access card swipe time from November 1, 2004 through January 11, 2005. There were 20 inconsistencies found where the claimant arrived later than her reported start time, most recently January 7, 2005, when she entered the building at 6:51 a.m. but her time sheet reflected 6:30 a.m. The claimant's time sheets all reflected just her scheduled start and end times of 6:30 a.m. to 3:00 p.m.

The claimant acknowledged that there were occasions where she had reported late for work; however, her then-supervisor was aware of her being late and had approved of her putting in her regularly scheduled hours on the time sheet but then informally staying and making up any missed time at lunch or at the end of the day, even though literally this was contrary to the employer's written policies. After the arrival of the new on-site supervisor, the new supervisor expressed concern to the claimant regarding the practice, and the claimant immediately began recording her actual time in and time out on the time sheets.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue 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 questions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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).

Iowa Code Section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is her failure to record her actual time in and time out on her time sheets. The claimant relied in good faith on

the guidance of her supervisor that she should report her scheduled time in and out and that she could informally make up missed time. After the new supervisor came on duty and informed the claimant this was no longer acceptable, the claimant did not continue the practice. Under the circumstances of this case, the claimant's following the instructions of her original supervisor over the written policy was at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, 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 February 28, 2005 decision (reference 01) is affirmed. 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.

ld/kjf