

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIELA D BAUER
Claimant

APPEAL NO. 09A-UI-15298-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACC ENTERPRISES LLC
Employer

OC: 09/20/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 8, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 12, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Michael Blume participated in the hearing on behalf of the employer with a witness, Marina Ludwigson. Exhibits One through Six were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a dietary cook from July 15, 2008, to September 21, 2009. She was informed and understood that under the employer's work rules, she was entitled to one 15-minute paid break and one-half hour unpaid lunch each day.

The claimant overstayed her 15-minute break by 12 minutes on September 17, 2009. She had gone outside to take a phone call from her husband and did not return from break on time. She did not willfully violate the break policy.

She was discharged on September 21, 2009, for taking too long of a break without permission.

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 section 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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. She had not been warned about talking too long of a break before.

DECISION:

The unemployment insurance decision dated October 8, 2009, reference 01, is affirmed. 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/pjs