

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARIA M VALDIVIA**  
Claimant

**APPEAL NO. 09A-UI-04701-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CURLYS FOODS**  
Employer

**Original Claim: 02/15/09  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Maria M. Valdivia (claimant) appealed a representative's March 11, 2009 decision (reference 02) that concluded she was not qualified to receive benefits, and the account of Curly's Foods (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, telephone hearings were held on April 21 and 29, 2009. The claimant participated in the hearings with her attorney, Dennis McElwain. Kathy Peterson, the human resource manager, Nancy Kent, and Greg Westhoff, the plant manager, appeared on the employer's behalf. Ike Rocha interpreted the hearing. 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:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on July 5, 2006. The claimant worked as a full-time quality control technician.

During her employment, the claimant received several warnings. The claimant received a verbal warning on March 4, 2008, for finishing her pre-op work and failing to return the work floor in a timely manner. On March 25, 2008, the claimant received a written warning and a two-day suspension for failing to properly keep some records. On December 22, 2008, the employer gave the claimant a final written warning for failing to verify a used by date on a label. After the claimant received the December 22 final written warning, she understood her job was in jeopardy.

On February 16, Westhoff randomly reviewed video tapes of the previous week. During the review, he observed that on February 11, the claimant was in the break room for ten minutes, 11:23 a.m. to 11:33 a.m., talking to another employee. This time was between the first break and lunch break. Later, Westhoff observed the claimant take 15 more minutes for her lunch

break than the employer allowed. The claimant was on a lunch break 11:52 a.m. to 12:36 p.m. During her lunch break, the claimant was talking to another employee. The employer allows 30 minutes for a lunch break. Quality control technicians do not punch out, they are supposed to note when they leave for their lunch break and go back to work in 30 minutes.

The employer disciplined the co-worker the claimant had been talking to because she had also taken more than a 30-minute lunch break. This employee was not discharged. The employer discharged the claimant for taking an excessive lunch break and for loitering in the break room for ten minutes on February 11, 2009. If the claimant had not received other disciplinary warnings, the employer would not have discharged her on February 16, 2009. The employer discharged the claimant for again violating one of the employer's policies – loitering and taking an excessive lunch breaks.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established compelling business reasons for discharging the claimant. After the claimant received her December 22 final written warning, she knew her job was in jeopardy. The claimant also knew the employer had a camera in the break room. On February 11, 2009, the claimant went to the office to copy some material and talked to a co-worker either before or after she made the copies. During lunch that day, the claimant and a co-worker forgot about the time when they became engrossed in a conversation. While the claimant received a verbal warning for not returning to the plant in a timely manner in early March 2008, her other previous written warnings had nothing to do with loitering or taking excessive breaks.

On February 11, the claimant did not intentionally fail to return from lunch within 30 minutes. Instead, she forgot about the time while talking to a co-worker. The claimant was negligent when she failed to promptly return to work from making copies in the office and when she forgot about the time during her lunch break. The facts do not establish that the claimant committed work-connected misconduct. As of February 15, 2009, the claimant is qualified to receive benefits.

**DECISION:**

The representative's March 11, 2009 decision (reference 02) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of February 15, 2009, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw