

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBIN L SIEGFRIED
Claimant

APPEAL NO. 09A-UI-08511-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINZE MFG INC
Employer

**Original Claim: 05/10/09
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Robin Siegfried, filed an appeal from a decision dated June 10, 2009, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 30, 2009. The claimant participated on his own behalf. The employer, Kinze, did not provide a telephone number where a witness could be contacted and did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Robin Siegfried was employed by Kinze from September 2, 2008 until May 5, 2009 as a full-time forklift driver. The employer's policy requires employees to punch out for lunch only if they leave the building. This policy was instituted after the claimant was hired.

In January 2009, Mr. Siegfried was given a verbal warning and then a written warning from his supervisor for failing to punch out for lunch when he left the building. The supervisor notified him after the second warning his job was in jeopardy if there was another occurrence.

On May 5, 2009, the claimant left the premises to go across the street, and did not punch out. While on his break, he realized this and reported it to his supervisor immediately upon his return. The supervisor acknowledged Mr. Siegfried had been honest about the situation but he still had to report it to human resources. At the end of his shift, the claimant was summoned to the human resources office and discharged.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant was discharged for violation of a known company rule. The issue is not whether the employer made a correct decision in separating the claimant, 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 misconduct warrants denial of unemployment benefits are two separate decisions. *Pierce v. IDJS*, 426 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. IDJS*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant did not willfully violate the policy, he merely forgot to punch out when he left the building and immediately reported the incident to his supervisor. He did not intentionally violate the policy and attempt to defraud the employer. An error in judgment does not constitute misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of June 10, 2009, reference 01, is reversed. Robin Siegfried is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw