

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA L SMITH
Claimant

APPEAL NO. 08A-UI-05376-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLIED SOLUTIONS LLC
Employer

**OC: 05/11/08 R: 01
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 5, 2008, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on June 20, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Linda Maradol participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a customer service representative from October 1, 2003, to May 13, 2008. She was informed and understood that under the employer's policy, employees were encouraged to use their breaks and lunch for personal calls and were subject to discipline if they exceeded 20 minutes per week of personal calls during work time.

The claimant received the following discipline for exceeding 20 minutes per week of personal calls during work time: coaching on July 17, 2007; verbal counseling on July 27, 2007; written counseling on July 30, 2007; suspension on September 25, 2007; suspension on October 30, 2007; and suspension on January 21, 2008. She was informed when she was suspended in January 2008 that she could be discharged if she had excessive personal calls during work time again.

During the week of May 4, 2008, the claimant had a total of 20.25 minutes of personal calls. When the claimant's supervisors discovered she had again exceeded the 20 minutes limit for personal calls, the claimant was discharged on May 13, 2008. Some of the phone calls the claimant made she did not believe would be counted because she had called her daughter to arrange for lunch and had hung up before voice mail picked up.

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.

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's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Considering the multiple warnings the claimant had received, she knew her job was in jeopardy yet continued to make excessive personal calls during her workday instead of making them on breaks or lunch. The fact that the claimant did not think calls made where voice mail did not pick up should count toward the 20-minute limit demonstrates she was not focused on the purpose behind the rule of limiting her personal calls. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated June 5, 2008, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs