

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA N FASTENOW

Claimant

APPEAL NO. 12A-UI-12744-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST ASSET MANAGEMENT INC

Employer

OC: 09/23/12

Claimant: Respondent (2R)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated October 15, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephoned hearing was held on November 27, 2012. Claimant participated. The employer participated by Mr. Brian Schweawer, Employee Relations Manager and Ms. Susan Reed, Supervisor. Employer Exhibits One through Five were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with her work.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Jessica Fastenow was employed by West Asset Management Company Inc. from February 2, 2009 until September 27, 2012 when she was discharged from employment. Ms. Fastenow was employed as a full-time insurance claim validator and was paid by the hour. Her immediate supervisor was Susan Reed.

The claimant was discharged after it was determined and the claimant admitted to timecard falsification. The claimant was aware that she was required to punch in and out for lunch and break periods. Although aware of the rule the claimant did not follow it. The claimant was observed taking lunch or break periods without punching in or out. The matter was reported to management personnel and the claimant was observed and payroll electronic entries were cross matched. The employer's investigation showed that the claimant on numerous occasions had gone to lunch or break without punching in or out as required.

It is the claimant's position that although she knowingly violated the company rule the claimant's conduct may have been influenced by psychological reasons. It is the claimant's further belief that because the matter was brought to her attention on September 26 by her supervisor and because the claimant was not discharged that day her termination the following day was not justified and she did not further violate the rule.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct in connection with the work. It does.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Inasmuch as the evidence in this case establishes that the claimant knowingly violated the company's time reporting rules and that her failure to follow the rules caused her to be paid for time that she was not performing services for the employer, the administrative law judge concludes that the claimant's conduct was in willful disregard of the employer's interests and standards of behavior. The claimant has not supplied any medical documentation to support her position that her conduct was caused by medical or psychological issues. The matter of the claimant's failure to follow the company's time reporting rules was brought to the claimant's attention on September 26, 2012 pending discharge the following day. The supervisors bringing the matter to the claimant's attention did not excuse or condone the claimant's intentional failure to follow reasonable time reporting rules. Benefits are denied.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated October 15, 2012, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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