

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WENDY S SCHULTZ**  
Claimant

**APPEAL NO. 11A-UI-09456-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GRINNELL REGIONAL MEDICAL CENTER**  
Employer

**OC: 06/19/11**  
**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated July 15, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 10, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Deb Nowachek participated in the hearing on behalf of the employer with witnesses, Linda Long and Mark Doll. Exhibit One was admitted into evidence at the hearing.

**ISSUES:**

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant worked full-time as a housekeeper from September 28, 2008, to June 23, 2011. Her normal work hours were from 4:00 p.m. to 12:30 a.m. The claimant was informed and understood that under the employer's work rules, employees were entitled to two paid 15-minute breaks for an eight-hour shift and one 30-minute unpaid lunch break. Employees were not allowed to leave the medical center for the 15-minute breaks. Employees who had permission from a supervisor to leave the facility during their shift for other than business purposes were required to punch out when they left and punch in when they returned.

Management had received reports from employees that the claimant was taking extra unapproved breaks. The employer reviewed the claimant's time records and surveillance video from May 9 to June 13, 2011.

On May 9 the claimant left the medical center for 8 minutes starting at 6:57 p.m. without permission and without punching out. On May 10, the claimant left the medical center for 21 minutes starting at 6:07 p.m. without permission and without punching out. On May 16, the claimant left the medical center for 9 minutes starting at 6:46 p.m. and for 35 minutes starting at

11:23 p.m. without permission and without punching out. On May 18, the claimant left the medical center for 10 minutes starting at 6:49 p.m. without permission and without punching out. On May 24, the claimant left the medical center for 8 minutes starting at 6:44 p.m. and for one hour and 57 minutes starting at 10:03 p.m. without permission and without punching out. On May 26, the claimant left the medical center starting at 6:56 p.m. without permission and without punching out. The employer is not sure when she returned. On May 31, the claimant left the medical center for 9 minutes starting at 6:56 p.m. and left again at 11:05 p.m. without permission and without punching out. On June 8, the claimant left the medical center starting at 10:45 p.m. without permission and without punching out. On June 13, the claimant left the medical center for 14 minutes starting at 5:58 p.m. without permission and without punching out. On each of the above dates, the claimant also punched out for 30 minutes from 8:00 to 8:30 p.m. for her unpaid lunch break.

After completely reviewing the records, management personnel, including the human resources director, environmental services supervisor, and facilities director, met with the claimant on June 15 to discuss the concerns about her unauthorized time away from the center. The claimant admitted she had taken extra breaks away from the center without permission and without punching out in violation of the employer's rules. She stated that some of the times when she left the medical center late in her shift, it was to help another housekeeper who worked at a different location. She admitted she had not received permission to do this from a supervisor.

After completing its investigation, the employer discharged the claimant on June 23, 2011, for repeated violation of the employer's time record policies.

The claimant filed for and received a total of \$3,480.00 in unemployment insurance benefits for the weeks between June 19 and October 1, 2011.

#### **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 § 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 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. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the

claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

**DECISION:**

The unemployment insurance decision dated July 15, 2011, reference 01, is reversed. 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. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw