IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

VERA M SPEARS
Claimant

IOWA ORTHOPAEDIC CENTER PC
Employer

APPEAL NO. 09A-UI-03276-DWT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 01/25/09
Claimant: Respondent (2/R)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Iowa Orthopaedic Center PC (employer) appealed a representative's February 17, 2009 decision (reference 01) that concluded Vera M. Spears (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 25, 2009. The claimant participated in the hearing. Amanda Mullins, a human resource generalist, and Marianne Monday-Edsill, the claimant's supervisor, appeared on the employer's behalf. During the hearing, Employer Exhibits One through Four were offered and admitted as evidence. 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 May 27, 2008. The clamant worked as a full-time fax room assistant. As a result of continuing problems, the employer gave the claimant a final warning (Employer Exhibit One) and placed the clamant on a January 19, 2009 performance plan. On January 19, 2009, the employer went over the guidelines and expectations of the claimant's job. The guidelines informed the claimant that when she left or came back from her 10-minute breaks or lunch break, she had to personally notify her supervisor she was going on or coming back from a break. If Monday-Edsill was not in her office, the employer required the claimant to send her an email informing Monday-Edsill she was going on or coming back from a break. (Employer Exhibit Four.)

On January 22, 2009, when the claimant was late coming back from lunch by eight minutes, she sent Monday-Edsill an email advising her of this fact. (Employer Exhibit Three.) On January 26, the claimant was training a temporary employee, and did not notify Monday-Edsill when she went on her morning break or lunch break or when she returned from these breaks. When the claimant did not contact Monday-Edsill when she left and returned from her morning

break, Monday-Edsill watched the claimant to see when she went on her lunch break. At 12:52 p.m. Monday-Edsill saw the claimant and the temporary employee go down the hallway with their coats and purses. The claimant did not notify Monday-Edsill, by personally talking to her or by email that she was leaving for lunch. Monday-Edsill documented that the claimant did not return to her work area until 1:25 p.m. But at 1:31 p.m., Monday-Edsill recorded the claimant had just walked in with her soda and coat on. (Employer Exhibit Two.) The claimant did not notify Monday-Edsill or send her an email as to when she returned from her lunch break.

Monday-Edsill did not approach the claimant on Monday, January 26, about failing to notify her or failing to note on her time clock that she took more than 30 minutes for her lunch. Monday-Edsill instead contacted Mullins. Since the claimant had already received a final written warning, had previously notified her supervisor when she had been eight minutes late from lunch, and the employer specifically told the claimant that she needed to notify her supervisor when she left and returned from a break, the employer decided to discharge the claimant.

The next day, when the employer talked to the claimant about what she had done the day before, the claimant denied she took a 40-minute lunch break that she did not record on her timecard. The claimant indicated she had been caught up with training the temporary employee on Monday and forgot about notifying Monday-Edsill when she left and returned from her breaks. The employer discharged the claimant on January 27 for failing to notify Monday-Edsill when she left and returned from a break and for failing to properly record on her timecard that she had taken more than 30 minutes for lunch the day before. (Employer Exhibit One.)

The claimant established a claim for benefits during the week of January 25, 2009. The claimant filed for and received benefits since January 25, 2009.

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).

After the employer gave the claimant a final written warning and went through the guidelines of her job on January 19, 2009, the claimant knew or should have known her job was in jeopardy. On January 22, 2009, the claimant demonstrated she understood that when she took more than 30 minutes for lunch, she had to accurately reflect the time she had been at lunch.

On January 26, the claimant failed not only once, but four times to notify her supervisor when she went on a break or returned from a break. While the employer asserted the claimant took a 40-minute lunch break, Monday-Edsill's emails to Mullins indicate two different times the claimant came back from lunch. The first time, Monday-Edsill wrote, "It is now 1:25 and they are returning but again no emails." Two minutes later, Monday-Edsill sent Mullins another email stating, "Actually Vera just walked in with her soda and coat on now. It is 1:31 p.m." Since Monday-Edsill reported two different times, the 1:25 p.m. will be used as the time the claimant returned from lunch. This makes the claimant three minutes late from returning from lunch instead of nine minutes. The fact remains, on January 26, 2009, the claimant was late in returning from her 30-minute lunch break. If the employer had not previously given the claimant a final warning and told her on January 19 it was mandatory that she notify Monday-Edsill personally or by email when she left and returned from breaks, the January 26 situation would not be that significant. Since the employer had warned the claimant that her job was in jeopardy, she had previously informed the employer when she returned from lunch late, and the employer required the claimant to contact her supervisor when she left her workstation, the claimant's failure to notify Monday-Edsill four different times when she left and returned from breaks on January 26 amounts to an intentional and substantial disregard of the employer's instructions. The facts do not even indicate the claimant talked to Monday-Edsill about this omission anytime on January 26, 2009. Under the facts of this case, the employer discharged the claimant for work-connected misconduct. As of January 25, 2009, the claimant is not qualified to receive benefits.

Since the claimant has received benefits since January 25, 2009, the issue of overpayment or whether she is eligible for a waiver of any overpayment shall be remanded to the Claims Section to determine.

DECISION:

The representative's February 17, 2009 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of January 25, 2009. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for waiver of any overpayment is remanded to the Claims Section to determine.

_____
Debra L. Wise
Administrative Law Judge

_____
Decision Dated and Mailed

dlw/kjw