

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EVA N THOMPSON

Claimant

APPEAL NO. 10A-UI-08583-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROCK VISION CLINIC PC

Employer

OC: 05/02/10

Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Rock Vision Clinic, filed an appeal from a decision dated June 7, 2010, reference 01. The decision allowed benefits to the claimant, Eva Thompson. After due notice was issued a hearing was held by telephone conference call on August 3, 2010. The claimant participated on her own behalf. The employer participated by Office Manager Chris Heim and Co-Owner Jon Judisch. Exhibit One was admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Eva Thompson was employed by Rock Vision Clinic from February 25, 2008 until May 4, 2010 as a part-time office manager. She had received evaluations on March 17 and August 1, 2008, which included her work schedule which was Monday and Tuesday 8:00 a.m. until 5:00 p.m., Wednesday 10:00 a.m. until 4:00 p.m., Thursday 8:00 a.m. until noon, and Friday 10:00 a.m. until 4:00 p.m. Her lunch was to be from 12:30 p.m. until 1:30 p.m.

On May 22, 2009, the claimant changed her lunch period because of some personal family matter. She had sent a fax at the last minute to supervisor Chris Heim but did not wait for approval before leaving. The employer counseled her on this and informed her any such changes needed to be approved in advance. In July 2009 she was counseled several times about data input errors in the computer.

On May 4, 2010, the claimant was 15 minutes late to work. She then changed her lunch period, again without prior approval, to go to the school where her grandchildren went in order to deal with a behavioral issue they were having. Co-Owner Dr. Judisch found out only when he got done with one patient around 11:00 a.m. and found two or three patients who had not had the required pre-examination "work up" Ms. Thompson was to do and other tasks undone. The other office worker, Kathy Suntken, was not qualified or certified to do the work up.

Dr. Judisch investigated and found the claimant had switched lunch periods with Ms. Suntken without talking with him or Ms. Heim. He further discovered the claimant was tardy approximately 95 percent of the time on Mondays and Tuesdays when she was scheduled to begin at 8:00 a.m. She was late because she would take her grandchildren to a school where a bus would pick them up to take them to another school. There is a teacher present at the drop-off site to supervise all the children but Ms. Thompson elected to always stay until the bus actually arrived. She would write on her time cards she arrived at 8:00 a.m. because she felt she would make up the time informally at some point during the week. The employer had not approved this arrangement and she never asked whether she could change her start time to 8:15 a.m. on those days so she could stay until the bus arrived at the drop off site to pick up her grandchildren.

She switched lunch periods with Ms. Suntken on May 4, 2010, because two of her grandchildren had experienced some behavioral problems at school and she decided to go there and have lunch with them. The school authorities did not request her to come but she felt she needed to be with her grandchildren and left. When she returned around 1:00 p.m. Dr. Judisch confronted her and informed her she was discharged.

Eva Thompson has received unemployment benefits since filing a claim with an effective date of May 2, 2010.

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 aware she was not to switch her lunch period without prior approval from a supervisor because she had been counseled about this in the past. But she still elected to leave the office with patients waiting to be helped by her in order to go to school and have lunch with her grandchildren. This was not an emergency situation which required immediate medical attention for her grandchildren. The school had not requested her to come, it was entirely her own decision. This is a direct violation of a known rule. Her personal, non-emergency family issues do not constitute good cause for missing work and failing to get approval from a supervisor in advance.

In addition, the employer discovered that day she was tardy the majority of the time on Mondays and Tuesdays because she elected to wait with her grandchildren for the bus to arrive even though there was a responsible, supervising adult at the drop-off location. She made no effort to change her start time on those days, merely assumed the employer would be okay with her informally "making up" the time at some point during the week, but there is no supporting documentation regarding this. Her assumption she could arrange her own work hours was a violation of the specified work schedule the employer had established. This is conduct not in the best interests of the employer. The claimant is disqualified.

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.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of June 7, 2010, reference 01, is reversed. Eva Thompson is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs