

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANA S SOJKA
Claimant

APPEAL NO. 08A-UI-02455-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SYSTEMS UNLIMITED INC
Employer

**OC: 02/10/08 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 4, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 26, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Kari Wilken participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part-time as a counselor from May 5, 2005, to February 7, 2008. The claimant was informed and understood that under the employer's work rules, falsification of time information was grounds for discipline.

The claimant's normal schedule was to work from 12:30 to 3:30 p.m. at one work location and then from 3:45 to 5:15 p.m. at a second work location. The employer had instituted a new timekeeping system that required an employee to use a phone system to clock in and out.

On February 1, 2008, the claimant reported to work and clocked in at 12:22 p.m. She left early from her first work location at about 2:00 p.m. She arrived at her second work location at her scheduled time for 3:45 p.m. The claimant forgot to call in when she left work at 2:00 p.m. and when she arrived at her work location at 3:45 p.m. She did call in to punch out at 5:22 p.m. when she left work at the end of the day.

On Sunday, February 3, the claimant filled out her paper time sheet, which was used as a backup since the phone system was new. The claimant reported her time on the time sheet based on her scheduled hours and forgot that she had left work early on February 1.

On February 4, the claimant's supervisor, Vanessa Widler, questioned the claimant about where she was at 2:30 p.m. because Widler had called the office and she was not there. The claimant

admitted to Widler that she had left work early. When Widler asked if she had clocked out when she left, the claimant admitted she had not and told Widler that she would fill out a time adjustment form to correct her time. Widler told her that she could not do that. Widler explained that she would have to talk with her supervisor to decide what they were going to do about her misreporting her time.

The claimant was allowed to continue to work. She prepared the time adjustment form and talked to Widler about it on February 6. Widler would not accept the form and said she had not had a chance to talk to her supervisor yet. On February 7, 2008, the employer discharged the claimant for misreporting her time. The claimant had never been counseled or warned about misreporting her time in the past.

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 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 substantial and 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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. No willful and substantial misconduct has been proven in this case. I believe the claimant's testimony that she did not willfully misreport her time. She had not been warned about similar conduct before. At most the evidence shows isolated negligence, which does not meet the standard for misconduct under the unemployment insurance law.

DECISION:

The unemployment insurance decision dated March 4, 2008, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs