

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROL S ROBBINS
Claimant

APPEAL NO. 08A-UI-01452-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VISTA BAKERY INC
Employer

**OC: 04/01/07 R: 04
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge/Suspension - Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 5, 2008, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on February 26, 2008. Claimant participated and was represented by David Loetz, Attorney at Law. Employer participated through Karen Taylor.

ISSUE:

The issue is whether claimant was suspended and discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time packer from July 19, 1996 until January 14, 2008, when she was discharged. Her last day of work was January 7, 2008 when she was suspended for having left the line on January 5 when she worked an overtime shift. Claimant clocked in at 6:40 a.m. to attend a safety meeting and then reported to her work area. She continued working until coworker Ashley Linneman reported to relieve her for her break. Claimant asked her to relieve her again at the end of the 12-hour shift at 6:40 p.m. and Linneman agreed. At the point where claimant completed her 12-hour shift and clocked out, there was not a team leader or supervisor in the area. On occasions during her regular eight-hour shift when there was a safety meeting, claimant would not work additional time before or beyond the end of her shift to compensate for the time spent in the safety meeting. Employer had never warned claimant about leaving early or leaving without permission of a supervisor.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was suspended and discharged from employment for no disqualifying reason.

Iowa Code § 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 establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Since employer did not communicate expectations with claimant about working beyond the 12-hour shift in addition to the time spent in the safety meeting, claimant was reasonable in clocking out when she did. At most, leaving without checking with the supervisor after working twelve hours was merely an isolated incident of poor judgment, and inasmuch as employer had not previously warned

claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are allowed.

DECISION:

The February 5, 2008, reference 01, decision is reversed. Claimant was suspended and discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. The benefits withheld effective the week ending January 19, 2008 shall be paid to claimant forthwith.

Since employer delayed the termination meeting at least twice resulting in an unplanned extension of her suspension, claimant may make an application with the local office for backdating benefits to the week beginning January 6, 2007 if she was not paid during the suspension.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw