

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHARON A MILLER
Claimant

APPEAL NO. 10A-UI-03446-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RADA MFG CO
Employer

OC: 02/07/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 1, 2010, reference 01, that concluded she was discharged for work-connected misconduct. Telephone hearings were held on April 21 and 27, 2010. The parties were properly notified about the hearing. The hearing was consolidated with the agreement of the parties with the hearing for Amy Remley. The claimant participated in the hearing represented by Roger Sutton, attorney at law, and with a witness, Amy Remley. Shawn Thill participated in the hearing on behalf of the employer with witnesses, Greg Freebury, Bryan Junker, and Brent Hobert. Claimant's Exhibits 1S, 1A, 2S, 2A, 3S, 3A, 4S&A, 5S&A, 6S&A, 7A&S, 8A&S, 9S, 9A, 10S, and 10A, and Employer's Exhibits 1AR and 1SM were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The employer is a manufacturer of cutlery and kitchen utensils. The claimant worked full time from October 1998 to February 2, 2010. Her final work assignment was working in the wash and wipe department. Her coworker in the department was Amy Remley.

The claimant and Remley were compensated using a complicated combination of a piece-rate (which varied depending on the product being processed) and an hourly rate for new products for which a piece rate had not been set and for shoptime. To prevent injury and defects in quality caused by employees working too fast, the piece rate had a cap of \$29.95 per hour. The hourly rate was figured by dividing the piece-rate wages earned for processing a quantity of a particular item by the amount of time it took to process those products.

The claimant was informed and understood that employees were prohibited from manipulating the compensation system to obtain pay they were not due. She understood that the employer's work rules required employees to enter their own time and number of items processed. She also understood that she was not to enter her time and number of products processed (known as scanning products) until she had completely finished the products in question.

The claimant had been warned several times about processing products during break times, which caused the claimant to receive compensation she was not due since the piece-rate included payment for paid breaks. In addition to verbal warnings, she received a written warning for this on October 8, 2009.

On February 3, 2010, a supervisor noticed that the Remley was scanning products even though he saw a tray of products that had not been washed and wiped yet, which was a violation of the rules since she was representing on the records that she had finished the product. When Remley was approached by the supervisor, she claimed that she had missed the other product by mistake and entered the full amount of the products and changed the time. The claimant also changed the number of products and the time.

On February 4, 2010, a supervisor noticed that Remley had scanned products for both herself and for the claimant, which was a deliberate violation of company policy. The claimant participated in this violation by allowing Remley to enter her time and scan products for her.

After the events on February 3 and 4, the employer conducted an investigation into the recordkeeping practices of the claimant and Remley during the months of January and February. The employer discovered several instances where the claimant had processed hourly product over break time, which was a deliberate violation of the employer's work rules and the warnings she had been given.

The investigation also disclosed that the claimant and Remley had a practice of going in after the fact and making changes to their scan times. Because the claimant and Remley were very efficient in their work, often their calculated hourly rate went over the cap of \$29.95. When this happened, the claimant and Remley had a practice of modifying their time by adding a minute or two so that the calculated hourly rate dropped somewhat below the cap. They did this because other employees complained that their fast processing of products caused slower employees to be criticized by management for not keeping up with Remley and the claimant, and that it also negatively impacted future piece-rate calculations. The practice also concealed the fact that the claimant and Remley were often going over the cap, which would have triggered management concerns about quality and safety. The employer discovered the claimant did this on January 5, 14, 19, and 28, 2010.

The employer discharged the claimant on February 5, 2010, due to her willful violations of the employer's work rules and past warnings during the months of January and February 2010 as described above.

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 section 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 violations of known work rules and warnings were willful and material breaches of the duties and obligations to the employer and substantially disregarded the standards of behavior the employer had the right to expect of the claimant. Remley admitted she had entered time for the claimant. The claimant knew this and allowed it. The claimant had adjusted time records to add time to completed jobs to avoid having other employees complain about her working so quickly. She also must have known that that the cap was set to make sure employees were doing safe and quality work. She concealed this information from the employer—which the employer had the right to know—by adjusting her time. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated March 1, 2010, reference 01, is affirmed. 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.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs