

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATASHA S SMITH
Claimant

APPEAL NO. 09A-UI-02418-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN METER
Employer

OC: 01/04/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

Natasha Smith filed an appeal from a representative's decision dated February 6, 2009, reference 01, which held her not eligible to receive unemployment insurance benefits based upon her separation from American Meter. After due notice, a telephone hearing was scheduled for and held on March 10, 2009. Ms. Smith participated personally. The employer participated by Ms. Kay Sudbeck, Human Resource Generalist, and Mr. George Wilson, Area Manager. Employer's Exhibits One through Four were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Natasha Smith was employed by American Meter from July 14, 2008 until September 29, 2008 when she was discharged for repeated violation of company policies. Ms. Smith was employed as a full-time production worker and was paid by the hour.

The claimant was discharged for repeated tardiness, failure to follow work directions with respect to the performance of her duties and leaving her work station without authorization. During the course of her employment, Ms. Smith was repeatedly tardy in reporting to work and had been warned on three occasions by the employer. The claimant had also been counseled by her supervisor for throwing parts, being away from her work station and being unproductive during work hours. The claimant had also been counseled about failing to report to work wearing the proper attire for production work. In spite of the warnings the claimant continued to violate company rules by sitting during production time, throwing parts and leaving her work station without authorization as well as taking excessive break periods. On September 26, 2008, the claimant was observed leaving her work area at 10:25 p.m. although she was expected to remain at her station until 11:00 p.m. that night. It was determined that the claimant

had left the work area to go outside and smoke in violation of company policy. Based upon a review of the repetitive nature of the claimant's violations of work rules and expectations, a decision was made to terminate Ms. Smith from her employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Smith was discharged for misconduct in connection with the employment. It does.

The evidence in the record establishes the claimant was aware of the company's reasonable work expectations and company rules. The claimant had received a copy of the company handbook and had attended orientation. In addition, the claimant had been repeatedly warned by the company with respect to punctuality, following work rules, remaining at her work station and being productive during work hours. In spite of the warnings, the hearing record establishes that Ms. Smith continued to violate the company's reasonable work rules. A final decision was made to terminate the claimant when it was determined that the claimant had left her work station over one-half hour before the end of the shift without authorization and had admitted going outside to smoke during this period.

Although the claimant was on a probationary 90-day new hire period she was not discharged from her employment based upon inability to perform her duties but instead because the claimant had shown a willful disregard for the employer's interests and standards of behavior that the employer had a right to expect of its employees whether probationary or full-time, permanent workers.

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.

For the reasons stated herein, the administrative law judge concludes that the claimant was discharged for misconduct in connection with her work. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated February 6, 2009, reference 01, is affirmed. Natasha Smith is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, providing that she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs