

IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS

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

SHELLY R WALDEMAR  
1205 N CLARK ST  
CARROLL IA 51401-2053

**APPEAL NO: 09A-UI-18952-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

AMERICAN HOME SHIELD CORP  
c/o TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283

**APPEAL RIGHTS:**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

***Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHELLY R WALDEMAR**  
Claimant

**APPEAL NO: 09A-UI-18952-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMERICAN HOME SHIELD CORP**  
Employer

**OC: 11/15/09**  
**Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed a representative's December 9, 2009 decision (reference 01) that concluded she was not qualified to receive benefits, and the employer's account was exempt from charge because the employer discharged her for disqualifying reasons. A telephone hearing was held on January 28, 2010. The claimant participated in the hearing. Tom Kuiper, a representative with TALX, represented the employer. Ann Fitzpatrick, K'Lynn Ludwig and Melanie Denny appeared as witnesses for the employer. During the hearing, Employer Exhibits One through Four were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on November 19, 2007. The claimant worked as a full-time appliance purchasing associate. Denny supervised the claimant.

In March 2009, the employer implemented a new time-keeping system. The new system required employees to log into a web-based application when they came to work or left. The claimant had problems remembering to log into the web-base application so her time could be accurately recorded. When the claimant forgot to log onto the web-based application to record her time, she notified Denny that she had not recorded her time correctly.

The employer started giving the claimant written warnings for failing to accurately record her time on July 28, 2009. (Employer Exhibit One.) The claimant received the warning after she sent Denny an email that she had forgotten to log on because she started taking business-related phone calls right away. On October 23, the employer gave the claimant a final warning for failing to use the web-based application to accurately report her time. (Employer Exhibit Three.) The employer asked the claimant if there was anything the employer could do to help her remember to use the web-base application for time-keeping purposes. The claimant

suggested sending her an email reminder for her to use the application. The claimant understood her job was in jeopardy if she had further incidents where she did not use the web-based application to log in or out.

The claimant had been in an accident that caused memory problems. As a result of the injuries she incurred from the accident she still took some medication. The medicine sometimes affected her memory. After the claimant understood her job was in jeopardy after October 23, she tried various means to make sure she used the web-based time reporting application correctly.

On November 18, the claimant was just finishing a call with a customer when a supervisor indicated she needed to leave and get her lunch. The claimant was also trying to find out where a meeting would be held that afternoon. The claimant had many things on her mind and forgot to use the web-based system to record the time she left for lunch. After the claimant left, her boyfriend asked her if she had properly noted the time she left for work. Since the claimant had previously been told that if she logged off late, she was not complying with the employer's procedure because she still was not accurately recording the time she worked. The claimant did not go back in because she understood she had already violated the employer's time-keeping policy when she had not recorded the exact time she left for lunch.

When the claimant came back after the meeting, she told Denny that she had forgotten to accurately report the time she left for lunch that day. At the end of the day, the employer discharged the claimant. The employer discharged the claimant because she violated the employer's policy about accurately recording her time. (Employer Exhibit Four.)

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established justifiable business reasons for discharging the claimant. The claimant violated the employer's time-keeping system by forgetting at times to timely use the web-based application. Even though the employer gave her written warnings and talked to her, the facts do not establish that the claimant intentionally failed to accurately and properly use the employer's timekeeping system. The claimant tried to use the system to record when she was

at work and when she was not at work. The claimant's actions do not constitute negligence to the extent that she committed work-connected misconduct. On November 18, the claimant was multi-tasking and simply forgot to record she left for lunch after a supervisor told her to hurry up and leave so she would not be late for a meeting that was scheduled that afternoon. Since the claimant did not commit work-connected misconduct, she is qualified to receive benefits as of November 15, 2009.

**DECISION:**

The representative's December 9, 2009 decision (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons that do not constitute work-connected misconduct. As of November 15, 2009, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs