

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NICOLE E REMMARK**

Claimant

**APPEAL NO. 11A-UI-10261-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GRINNELL REGIONAL MEDICAL CENTER**

Employer

**OC: 06/26/11**

**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 18, 2011 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on August 29, 2011. Claimant participated. Employer participated through Environmental Services Manager Linda Long, Director of Facilities Mark Doll, and Human Resources Director Deb Nowachek.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a housekeeper from June 2006 and was separated from employment on June 23, 2011. On June 15, 2011, when Long suggested to housekeeper Diana that she have the claimant assist her, Diana reported to Long that claimant would not be able to help her because she left during her shift every night. Long investigated by reviewing security footage back to May 9, 2011 and speaking with other employees on claimant's shift. (Employer's Exhibit 1, page 4) The final incident occurred on June 13, 2011, when security footage shows the claimant left campus at 5:44 p.m. and returned at 5:58 p.m. without authorization or clocking out when leaving the building. She took her half-hour break at 8 p.m. that date.

Floor Technician Dan Perkins stated on June 17 that he did not notice anyone leaving when they should not be. Housekeeper Eric Tietz was interviewed the same day and said he had seen claimant's car gone at 7 p.m., saw claimant and another employee, Wendy, return with claimant at 7:15 p.m. smelling strongly of cigarettes, and saw her car gone again at 10:50 p.m. on June 10. Wendy was also discharged. Housekeeper Diana said breaks were taken from 5:30 p.m. to 7 p.m. on the 4 p.m. to 12:30 p.m., with breaks from 6 to 6:30 p.m. and 15 minute breaks at 8 and 10 p.m. Housekeeper Donetta said she saw claimant and Wendy leave together after the 6 p.m. break was over and one night while taking a late break. She reported that when claimant was supposed to be working in the café, she sat with her, and that claimant and Wendy would be on break when she started her break and would still be there when she

left, even though they took their 30-minute break at 8 p.m., so the 6 p.m. break should have been 15 minutes rather than a half hour. On June 20, Off-Campus Housekeeper Sue Crawford reported that claimant failed to assist her because she would leave for extended periods of time and denied calling them for or receiving help. Housekeeper Audrey England recalled that claimant and Wendy left often to allegedly help Sue, when they did not have authorization to leave the building to do so. Crawford did not ask for or need their help, since that was a separate contract and the employer would not be paid for claimant's or Wendy's assistance. On June 15, Long confronted claimant, who said she was taking extra breaks to get away from coworkers who were making it difficult to report to work, but she had never complained to Long about this before. The employer delayed the termination decision until the conclusion of that investigation, which revealed no known complaints or problems with coworkers getting along. When confronted in the June 15 meeting, claimant admitted she knew she should be punching out when leaving the campus but did not do it. Long and Doll were available by cell phone if employees need to leave campus during their shift and a nursing shift supervisor was available on site. Claimant received a copy of the employee handbook when she was hired. The relevant policy requires that breaks be taken on medical center property, employees should not punch out for the 15-minute breaks as they are paid, rest breaks are not cumulative, and rest breaks may not be combined with meal breaks. (Employer's Exhibit 1, page 5)

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

Claimant's repeated failure to clock out or receive permission to leave the medical center property for breaks contrary to the established policy rises to the level of disqualifying job-related misconduct. Benefits are denied.

**DECISION:**

The July 18, 2011 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw