

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUDITH A MORALES
Claimant

APPEAL NO. 07A-UI-06446-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

OC: 06/03/07 R: 04
Claimant: Respondent (2)

Section 96.5-2-a – Discharge
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 22, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 16, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Jaime Ruess participated in the hearing on behalf of the employer. Exhibits One through Three were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full time for the employer as a trainer from April 18, 2005, to June 1, 2007. She was informed and understood that under the employer's work rules, falsification of time records was grounds for termination. The claimant was required to clock in at the beginning of her shift and out at the end of her shift using an internet-based timekeeping system. She was an hourly employee who was paid based on the times recorded on the internet-based timekeeping system. The claimant was aware that she could clock in remotely from any location with an internet connection and had done so when she was involved in training away from her regular work location.

On May 30, 2007, the claimant clocked in using the internet time system at 6:58 a.m., before she arrived at work. She actually reported to work at about 8:25 a.m., as shown by the time she logged in on her computer in the morning, which she would have to do before clocking in on the time system. Her supervisor later questioned the claimant's time entries, because the supervisor was at the workplace at 6:58 a.m. and the claimant was not there.

On May 31, 2007, the claimant clocked in using the internet time system at 7:12 a.m., before she arrived at work. She actually reported to work at about 7:58 a.m., as shown by the time she logged in on her computer. The human resource manager who was aware of the time discrepancy the previous day came into work at 7:20 a.m. and looked for the claimant, but she was not on the premises.

On June 1, 2007, the claimant clocked in using the internet time system at 7:05 a.m., before she arrived at work. She actually reported to work at about 8:19 a.m., as shown by the time she logged in on her computer. The human resource director arrived at work at 6:45 a.m. but never saw the claimant in her work area.

When the claimant was confronted by her supervisor and the human resources manager about her time records, she falsely claimed that on May 30 she had arrived at work and clocked at 6:58 a.m. and then left to get donuts for the orientation session that morning. She claimed that she had called another employee to let her know that she was going to be late because she was picking up donuts.

The claimant falsely claimed on June 1, 2007, that she had arrived at work about 7:05 a.m., clocked in on her computer, and left work to get gas in her car for 20 to 25 minutes. She said after she got back and checked her e-mail, she went to a supervisor's office to work on a project. This was not possible, because the human resources director was in the supervisor's office when the claimant asserted she was there working on a project.

After conducting an investigation, including determining when the claimant actually logged on to her computer, the employer discharged the claimant for falsifying her time records.

The claimant filed for and received a total of \$2,110.00 in unemployment insurance benefits for the weeks between June 3 and July 14, 2007.

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.

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.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. The claimant could not get her story straight about what happened on May 30, which undercuts her testimony. The employer's evidence demonstrates the claimant could not have been at work to punch in at the times she claimed. The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$2,110.00 in benefits.

DECISION:

The unemployment insurance decision dated June 22, 2007, reference 01, is reversed. 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. The claimant was overpaid \$2,110.00 in unemployment insurance benefits, which must be repaid.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw