

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

MONICA L MCCRACKEN  
1619 COLLEGE AVE  
DES MOINES IA 50314-1435

GOODWILL INDUSTRIES OF  
CENTRAL IOWA INC  
4900 NE 22<sup>ND</sup> ST  
DES MOINES IA 50313

Appeal Number: 06A-UI-07865-DWT  
OC: 07/02/06 R: 02  
Claimant: Appellant (1)

**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 the **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.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Monica L. McCracken (claimant) appealed a representative's July 25, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Goodwill Industries of Iowa, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 21, 2006. The claimant participated in the hearing. Gina Johnson, the executive secretary, and Karen Gregorie, the human resource director, appeared on the employer's behalf. 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 May 9, 2005. The employer hired the claimant to work as a full-time receptionist. Throughout the course of her employment, the claimant had problems remembering to clock in and out for lunch and taking a longer lunch break than the employer allowed. The claimant also had problems keeping her filing current.

On December 7, 2005, the employer gave the claimant a written warning for failing to keep her filing current. The employer also talked to the claimant numerous times about clocking in and out for lunch and taking more than 30 minutes for lunch.

In April 2006, the employer had an outside auditor examine the records. All the filing had to be done before the auditor came. The claimant understood her filing was current when the auditor came.

On May 11, 2006, the employer again warned the claimant she had to clock in and out when she took her lunch. On May 19, the employer reminded the claimant that the employer only authorized a 30-minute lunch break. On May 22, the claimant was gone an hour during her lunch break. On May 23, the claimant took a 40-minute lunch break; on May 24 she took a 36-minute lunch break; and on May 30 and June 1, the claimant took 40-minute lunch breaks. Since the claimant was taking more than 30 minutes for her lunch, on June 5, the employer told the claimant she was assigned a lunch break from 12:30 to 1:00 p.m.

On June 12, the claimant did not punch out for lunch. Sometime between 1:15 and 1:30 p.m., the claimant asked Johnson to record her lunch break on her timecard because she had forgotten to punch out for lunch. Johnson had walked by the claimant's work area between 1:00 and 1:15 p.m. and the claimant was not back from lunch. The person who covered for the claimant during her lunch break reported she had relieved the claimant at 12:30 p.m.

On June 9, the claimant told Johnson her filing was current with the exception of a few trays (four). The claimant had ten trays to file. Johnson looked through the paperwork that needed to be filed later that day and discovered documents from March the claimant had not filed. The employer concluded the claimant again failed to do her work satisfactorily by failing to keep her filing current. The employer found documents dated in March that had not been filed. The employer considered current to mean filing that was not over a week old in any of the trays. Counselors put completed paperwork into the appropriate trays that the claimant then filed.

On June 15, the employer discharged the claimant. The employer discharged the claimant because she failed to punch in and out on her timecard on June 12, she repeatedly took more than 30 minutes for lunch and she failed to keep her filing job duties current.

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 claimant knew or should have known her job was in jeopardy when the employer gave her warnings in May about punching in and out when she went on her lunch break, reminded the claimant she had only a 30-minute lunch break and finally told the claimant she had to take her lunch from 12:30 to 1:00 p.m. Although the claimant asserted she forgot her ID badge that she had to swipe to record her time in and out at work, the employer's testimony that this occurred on June 2 instead of June 12 is more credible. A preponderance of the credible evidence indicates on June 12 the claimant was outside smoking right before she went on her lunch break. The claimant forgot to punch out for lunch on June 12. An employee relieved the claimant at 12:30 p.m. on June 12 so the claimant could take her lunch. The claimant did not return from her lunch until after 1:15 p.m. Based on the claimant's history, it is more likely than not that she took more than 30 minutes for her lunch break even after the employer warned her that her job was in jeopardy for doing this.

It is possible some of the March documents the employer found in the filing trays on June 9 could have been recently placed in the tray by a counselor. Since it is not known how long the documents were put in the trays, the facts do not establish that the claimant did not have her filing current. Even though this violation was not established, the claimant still violated the employer's instructions by repeatedly taking more than 30 minutes for lunch. The claimant's repeated violation of this instruction constitutes an intentional and substantial disregard of the standard of behavior the employer had a right to expect from her. The employer discharged the claimant for a reason that amounts to work-connected misconduct. As of July 2, 2006, the claimant is not qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's July 25, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of July 2, 2006. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

dlw/cs