

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDSEY R LYON
Claimant

APPEAL NO. 11A-UI-09616 -VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARLEY'S & SATHERS CANDY CO INC
Employer

**OC:05/29/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated June 22, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 11, 2011. Claimant participated. Employer participated by Robin Travis, human resources manager. The record consists of the testimony of Robin Travis; the testimony of Lindsey Lyon; and Employer's Exhibits 1-4.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a confectionary manufacturer with a facility located in Creston, Iowa. The claimant was hired on June 7, 2010. She originally worked as a packer and then became a warehouse employee. She worked on what the employer calls the "B" shift, which runs from 3:00 p.m. to 11:30 p.m. She was a full-time employee. Her last day of work was May 31, 2011. She was terminated on May 31, 2011.

The incident that led to the claimant's termination occurred on May 25, 2011. The claimant left for her scheduled 15 minute break at 5:45 p.m. She did not return until 6:28 p.m. The claimant had been previously warned about taking breaks that exceeded 15 minutes and lunch times that exceeded 30 minutes. On March 30, 2011 the claimant took a 46 minute lunch break. She received a written warning. (Exhibit 1) The claimant took a 43 minute break on April 6, 2011. She received a second written warning. (Exhibit 2) On April, 11, 2011, the claimant took a 42 minute lunch break and on April 12, 2011, a 38 minute lunch break. She received a third written warning. (Exhibit 3) A fourth violation would lead to termination as the claimant was in step 3 of the employer's disciplinary process. The fourth violation occurred on May 25, 2011.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. An employer can reasonably expect that an employee will work as scheduled and follow policies on times for breaks, including both paid and unpaid lunch periods. The employer has the burden of proof to show misconduct.

The employer has established misconduct in this case. The claimant received both verbal and written warnings for taking excessive amounts of time on paid break and unpaid lunch. The

amounts of time taken by the claimant were not a few minutes here or there. The claimant clearly knew that the employer had policies on the amount of time she was entitled to take and despite verbal and written warnings, she continued to violate the employer's policies. The claimant's explanation that the clocks in the plant were not synchronized is not an excuse for her violations. At best the clocks were off by a few minutes. In addition, the claimant admitted that she never told Ms. Travis or her supervisor that her excessive break time was due to a problem with the clocks. The administrative law judge concludes that the claimant knowingly violated her employer's policies on break times. This is misconduct. Benefits are denied.

DECISION:

The decision of the representative dated June 22, 2011, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs