

records was grounds for discipline. Shelley Chance was the claimant's supervisor. The claimant had received several warning regarding her reporting late for work in June and July 2005. She received a warning on July 26, 2005, for tardiness and was informed that she was not allowed to flex her work schedule and she was not allowed to offset leaving work early by failing to take her breaks during the day.

Chance was preparing to issue another warning for tardiness at the end of August 2005, because the claimant was continuing to be report late for work. In investigating the claimant's time records, Chance discovered 30 times from June 6 to August 24, 2005, where the time the claimant reported on her time records was substantially different from the time she either entered or left the building as recorded through her building access card. The time involved on average 15 minutes of extra time that the claimant recorded beyond what it should have been based on when she entered or left the building. This continued after the warning given on July 26, 2005. For example, the claimant reported on her time records that she left work at 3:05 p.m. on July 27, but she left the building at 2:50 p.m. On July 28, she reported taking 20 minutes for lunch but was away from the building for 40 minutes. On August 2, she reported taking 40 minutes for lunch but was away from the building for 55 minutes. Finally, on August 24, the claimant reported taking a 60-minute lunch but was away from the building for 75 minutes. The claimant's misreported her time deliberately and received pay for time she did not work. The employer discharged the claimant on August 25, for willfully misreporting her time.

The claimant filed a new claim for unemployment insurance benefits with an effective date of August 21, 2005. The claimant filed for and received a total of \$1,944.00 in unemployment insurance benefits for the weeks between August 21 and October 8, 2005.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 \$1,944.00 in benefits for the weeks between August 21 and October 8, 2005.

DECISION:

The unemployment insurance decision dated September 14, 2005, 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 \$1,944.00 in unemployment insurance benefits, which must be repaid.

saw/kjw