

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBIN D PAULSON
Claimant

APPEAL NO. 08A-UI-08861-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRINNELL REGIONAL MEDICAL CENTER
Employer

**OC: 07/27/08 R: 02
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Grinnell Regional Medical Center (GRMC), filed an appeal from a decision dated September 23, 2008, reference 01. The decision allowed benefits to the claimant, Robin Paulson. After due notice was issued, a hearing was held by telephone conference call on October 20, 2008. The claimant participated on her own behalf. The employer participated by Employee Relations Specialist Vilene Savage, Director of Physicians Services Amy Morrow, Vice President Dave Ness and Human Resources Manager Deb Nowachek. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Robin Paulson was employed by GRMC from March 12, 2007 until July 18, 2008 as a full-time cashier. She received a copy of the employee handbook during the course of her employment. The break policy allows for two 15-minute breaks which are paid, and one meal break which is not paid. Employees may not smoke on the campus or on a paid break. To leave the campus requires the permission from a supervisor.

Ms. Paulson had received a verbal warning June 11, 2007, and a written warning January 16, 2008, with a follow up extension to her probation February 5, 2008, for confidentially issues. The progressive disciplinary policy calls for a verbal warning, a written warning, a second written warning with suspension and then discharge for any combination of policy violations. The employer reserved the right to skip any steps depending on the severity of the violation.

Part of the claimant's regular job duties was to go to the bank and make a deposit. On the afternoon of July 16, 2008, she was returning from making the trip to the bank, in her own vehicle, and decided to stop and have a cigarette. She was on the patio of a bar where she was seen by another employee of GRMC, who reported the incident to Human Resources Manager

Deb Nowachek. She and the claimant's supervisor Amy Morrow, interviewed Ms. Paulson that afternoon.

The claimant admitted she had stopped to have a cigarette at the bar because she had not had either of her breaks and had not had time to take a lunch break, either. She could have called her supervisor to ask permission to stop and have a lunch break while returning from the bank, but did not do so. The employer considered her previous warnings and elected to skip the suspension step. The claimant was discharged on July 18, 2008, by Ms. Morrow and Employee Relations Specialist Vilene Savage

REASONING AND CONCLUSIONS OF 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 claimant admittedly violated the employer's break policies. She did not punch out for lunch, did not get permission from a supervisor to leave campus during her break, and smoked during a paid break. However, the claimant was already off campus for her regular bank trip and her decision to stop and have a cigarette appears to have been prompted by the fact she knew she was not to smoke while on campus and considered this to be her missed lunch break.

While she made an error in not clearing this break or lunch break with a supervisor, the administrative law judge cannot conclude this rises to the level of substantial, job-related misconduct. Misconduct serious enough to warrant discharge is not necessarily serious enough

to warrant a denial of job insurance benefits. Newman v. IDJS, 351 N.W.2d 806 (Iowa App. 1984). The employer has failed to establish a current, final act of misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of September 23, 2008, reference 01, is affirmed. Robin Paulson is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css