

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELISSA M SIEBERT**  
Claimant

**APPEAL NO. 16A-UI-12520-TNT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DEERE & COMPANY**  
Employer

**OC: 11/15/15**  
**Claimant: Appellant (2)**

Iowa Code § 96.5-2-a

**STATEMENT OF THE CASE:**

Melissa Seibert filed a timely appeal from a representative's decision dated November 14, 2016, (reference 06), which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on December 9, 2016. Claimant participated. Participating on behalf of the claimant was Mr. Van Roth, Attorney at Law. The employer participated by Mr. Brian Van Engelenhoven, Labor Relations Administrator.

**ISSUE:**

Whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Melissa Siebert began employment with Deere & Company on September 10, 2007. The claimant was terminated by the company effective October 22, 2015, but later was reinstated under the provisions of a "last chance agreement" negotiated through a grievance procedure.

Under the terms of the "last chance agreement", Ms. Siebert was subject to discharge if she was subject to any disciplinary actions by the company for a period of 18 months after being reinstated.

Ms. Siebert was discharged from employment on October 27, 2016 based upon the employer's belief that she had left the work station where she was being trained for an extended period of up to two hours without notifying her supervisor or receiving permission to leave the production line where she was being trained.

Based up the employer's belief that Ms. Siebert had intentionally left the work area without notice and for no good cause reason, the employer concluded that the claimant had violated the terms of the "last chance agreement" because the offense made her subject to disciplinary action and terminated Ms. Seibert from employment.

On October 18, 2016, Ms. Siebert was being trained by another worker. Ms. Siebert was experiencing leg pain from a pre-existing condition and notified her supervisor of the problem. Ms. Siebert declined her supervisor's suggestion that she visit the company nurse, because she was fearful that the nurse would send her home for the day. Based upon the information that had been given to her by her supervisor, Ms. Siebert believed that if she were sent home without sufficient paid time off to cover her absence, she would be discharged under the terms of the "last chance agreement". The claimant's supervisor had indicated that the claimant did not have any paid time off available to her.

Ms. Siebert notified her trainer that she needed to go to the locker room area to elevate her leg and was given permission by the trainer to do so. Ms. Siebert asked the trainer to verify her whereabouts to her supervisor if asked.

The claimant went to the locker area and elevated her leg for approximately 20 minutes during break time. The claimant was located in the break area after the break period has ended where upon Ms. Siebert returned to the training line. The claimant explained to her supervisor why she had been away from the line, but did not realize that she had over-stayed her break period by a few minutes. The supervisor believed Ms. Siebert had been away from the line for an extended period.

Before leaving, the claimant had informed her trainer of her need to go to the locker area and the reason for it and believed that the notification was sufficient. Ms. Siebert's supervisor was not available to tell and claimant did not believe she would be able to walk through the large facility to find her.

In her previous position with the company, claimant had been authorized to take similar rest breaks without directly notifying her supervisor provided that her job responsibilities were being covered by another worker.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment under non-disqualifying conditions.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In discharge cases, the employer has the burden of proof to establish disqualifying conduct on the part of a claimant. *Cosper v. Iowa Department of Job Services*, 321 N.W.2d 6 (Iowa 1982). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of the employee may not necessarily be serious enough to warrant a denial of unemployment insurance benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based upon such past acts. The termination of employment must be based on a current act. See 871 IAC 24.32(8).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is not willing to furnish available information to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that more direct evidence will expose deficiencies in that party's case. See *Crosser v. Iowa Department of Public Safety* 240 N.W.2d 682 (Iowa 1976).

Although hearsay is admissible in administrative proceedings it cannot be the same as sworn direct firsthand testimony, provided that the firsthand testimony is credible and not inherently improbable.

In the case at hand the claimant was discharged based upon the employer's belief Ms. Siebert had intentionally left her work station without notice and had remained in the locker area without the knowledge or approval of her supervisor for an extended period of time in violation of the terms of the "last chance agreement".

In presenting its side in this matter, the employer relied on hearsay evidence to establish that the claimant's discharge took place under disqualifying conditions. In contrast the claimant appeared personally, testified under oath and provided firsthand testimony. The administrative law judge finds the claimant to be a credible witness and finds that her testimony is not inherently improbable. The administrative law judge therefore, gives more weight to the testimony of the claimant in this matter.

In the case at hand the claimant was faced with a dilemma. She had been told she had no paid off time available to her, and she had accumulated four previous unexcused absences. Ms. Siebert thus believed that if she were sent home by the nurse, she would be terminated from employment. The claimant chose instead to stay at work and temporarily elevate her leg in the locker room with the permission of a trainer. Based upon practices in another department of the plant where she had worked, Ms. Siebert believed that informing the trainer was sufficient as her supervisor was not available and the claimant knew the work was being covered by the trainer while she was gone. When discovered by her supervisor, the claimant had only overstayed her break period by a few minutes and did not do so intentionally.

The administrative law judge, after considering the evidence in this unusual case, concludes that the evidence does not show the requisite intent on the part of the claimant to violate the employer's rules or reasonable expectations, although she was careless in not returning to work as soon as the break period came to an end. In order to be disqualifying, misconduct on the part of a claimant must be "substantial" and when based upon carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying. See *Newman v. Iowa Department of Job Services* 351 N.W.2d 806 (Iowa App 1984).

The question before the administrative law judge is not whether the employer has the right to discharge Ms. Siebert for these reasons, but whether the discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate Ms. Siebert may have been a sound decision from a management viewpoint, the administrative law judge concludes that the claimant's conduct was in the nature of an isolated incident of poor judgment caused in part by inaccurate information that had been given to her supervisor earlier. Had the claimant know there was paid time available to her, the claimant could have gone home ill that day without the absence being counted against her attendance record. Benefits are allowed provided the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated November 14, 2016, (reference 06) is reversed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Terry Nice  
Administrative Law Judge

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Decision Dated and Mailed

rvs/rvs