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

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Appeal Number: 05A-UI-11194-RT
OC: 10/02/05 R: 03
Claimant: Appellant (2)

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, 4th 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.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Samantha J. Schmidt, filed a timely appeal from an unemployment insurance decision dated October 24, 2005, reference 02, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on November 15, 2005, with the claimant participating. The claimant was represented by Ronald J. Pepples, Attorney at Law. David Wolter, District Supervisor; Lisa Reints, Store Leader at the employer's store in Shell Rock, Iowa, where the claimant was employed; and Veronica Endelman, Food Service Specialists; participated in the hearing for the employer. Mary Brown was available to testify for the employer but not called because her testimony would have been repetitive and unnecessary. Employer's Exhibit 1 was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibit 1, the administrative law judge finds: The claimant was employed by the employer, most recently as a part-time cashier, from April 1, 2004 until she was discharged on April 12, 2005. The claimant had initially been a food service worker but was moved to a cashier. The claimant was discharged for an alleged violation of the employer's policies as shown at Employer's Exhibit 1, specifically number 2 in the guidelines under the employer's Code of Conduct and number 4 under the employer's Code of Conduct concerning other inappropriate behavior. Specifically, on August 10, 2005, when it came time for the claimant to clock out on the employer's computer, another co-worker was using the computer. When the computer is not available to clock in or out, the employee is to fill out a time adjustment slip. The claimant did so, reporting the end of her time at 2:00 p.m. However, the claimant actually left the employer's premises at 12:15 p.m. The claimant intended to write 12:00 p.m. but mistakenly wrote 2:00 p.m. The claimant had been off work since 12:00 p.m. but had been shopping in the store and wanted to sign out on her time as 12:00 p.m. The claimant had used time adjustment slips in the past, approximately once a month, without a problem. When the claimant was confronted about this by Lisa Reints, Store Leader at the employer's store in Shell Rock, Iowa, and one of the employer's witnesses, on August 11, 2005, the claimant indicated that she thought she had checked out at "1:00 or 2:00 ish" and then claimant had told Ms. Reints that she had clocked out at 1:30 p.m. At that time Ms. Reints was not aware of the claimant's time adjustment slip. The next day, when the claimant was confronted by David Wolter, District Supervisor, and ultimately discharged, the claimant conceded that she had erroneously filled out the time adjustment slip but that she had done so carelessly, intending to put 12:00 p.m., and that her mistake did look bad. The claimant had never received any relevant warnings or disciplines. There was no other reason for the claimant's discharge.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was not.

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 parties agree, and the administrative law judge concludes, that the claimant was discharged on August 12, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. It is well established that the employer has the burden to prove disqualifying misconduct. See Iowa Code section 96.6(2) and Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982) and its progeny. Although it is a close question, the administrative law judge concludes that the employer has failed to meet its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The only reason for the claimant's discharge was incorrectly completing a time adjustment slip on August 10, 2005, showing that she was clocked out from her work or off work at 2:00 p.m. when in fact the claimant had left the employer's premises at 12:15 p.m. The claimant credibly testified that she did fill out the time adjustment slip incorrectly but that she did so by mistake intending to write 12:00 p.m. and instead wrote 2:00 p.m. There is not a preponderance of the evidence that the claimant's incorrect completion of the time adjustment slip was either willful or deliberate and therefore it is not disqualifying misconduct for those reasons.

The evidence does establish that the claimant had used the time adjustment slip on prior occasions without a problem. The claimant did not clock out on the computer because it was busy, being used by a co-worker. The employer's witnesses agreed that if the computer was busy an employee should use a time adjustment slip. There was some evidence that the computer screen could be "minimized" and the claimant could enter time on the computer even if the computer was being used by another. However, it is clear from the evidence that the computer was being used and the claimant credibly testified that she did not want to bother the co-worker who was using it. Further, there was some evidence that the claimant told one of the employer's witnesses, Lisa Reints, Store Leader, that she had left work at "1:00 or 2:00 ish, " and that she had left about 1:30 p.m. However, even Ms. Reints testified, as did another witness, Veronica Endelman, Food Service Specialists, that the claimant merely said that she "thought" that she had left at that time. It appears that the claimant did not remember when she had left and was equivocal when answering Ms. Reints. There is also evidence that the claimant informed another employer's witness, David Wolter, District Supervisor, that the error in her time adjustment slip "looked bad" but that the claimant went on to say that it was a mistake. Although it is a close question, the administrative law judge is constrained to conclude

that there is not a preponderance of the evidence that claimant's completion of the time adjustment slip is neither willful or deliberate so as to establish disqualifying misconduct for those reasons.

The administrative law judge is constrained to conclude that that the claimant's completion of the time adjustment slip was carelessness or negligence. The issue then becomes whether the carelessness or negligence was in such a degree of recurrence as to establish disqualifying misconduct. The administrative law judge concludes that here the claimant's carelessness or negligence is not in such a degree of recurrence so as to establish disqualifying misconduct. The claimant had never been accused of such behavior before nor had she ever received any relevant warnings or disciplines. Accordingly, the administrative law judge concludes that the claimant's error in completing the time adjustment slip was not carelessness or negligence in such as degree of recurrence as to establish disqualifying misconduct, but rather was ordinary negligence in an isolated instance and is not disqualifying misconduct.

In summary, and for all the reasons set out above, the administrative law judge concludes that the claimant was discharged but not for disqualifying misconduct and, as a consequence, she is not disqualified to receive unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment insurance benefits, and misconduct, to support a disqualification from unemployment insurance benefits, must be substantial in nature including the evidence therefore. Fairfield Toyota, Inc. v. Bruegge, 449 N.W.2d 395, 398 (Iowa App. 1989). The administrative law judge concludes that there is insufficient evidence here of substantial misconduct on the part of the claimant to warrant her disqualification to receive unemployment insurance benefits. Unemployment insurance benefits and allowed to the claimant provided she is otherwise eligible.

DECISION:

The representative's decision of October 24, 2005, reference 02, is reversed. The claimant, Samantha J. Schmidt, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible, because she was discharged but not for disqualifying misconduct.

dj/kjw