

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADANA RAJKOVIC
Claimant

APPEAL NO: 09A-UI-09520-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEEF PRODUCTS INC
Employer

OC: 05/31/09

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Adana Rajkovic (employer) appealed a representative's June 30, 2009 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Beef Products, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 22, 2009. The claimant participated in the hearing. Rachel Clemons appeared on the employer's behalf. One other witness, Jennifer Stubbs, was available on behalf of the employer but did not testify. During the hearing, Employer's Exhibit One was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 3, 2006. She worked full time as a production worker at the employer's Waterloo, Iowa facility. She normally worked 6:00 a.m. to 2:00 p.m., usually six or seven days per week. On occasion the employer would have the shift on an early start such as 1:00 a.m. Her last day of work was June 1, 2009. The employer sent her home early that day and discharged her on June 2, 2009. The stated reason for the discharge was repeated theft of time by taking extended breaks and falsification of time documentation.

The claimant had received a final warning for taking extended breaks and falsification of time documentation on November 8, 2008, and had received an additional "absolute final" warning for the same thing on May 23, 2009. On June 1 the claimant was working an early start shift beginning at 1:00 a.m. Video surveillance revealed that at 3:02 a.m. she left her work station and went to the restroom and to the break room. She did not return to her work station until 3:49 a.m. She was only permitted to take a 15 minute break. On the break sheet she wrote that she had taken break from 4:00 a.m. to 4:15 a.m. The claimant's supervisor had noted that she had been missing from her work station and informed human resources that the claimant

had taken an extended break. The claimant was then sent home pending further review. After the employer's human resources staff viewed the video surveillance and confirmed the precise times the claimant was away from her work station, the employer informed the claimant on June 2 that she was discharged.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's repeated theft of time by taking of extended breaks and falsification of information on the time documentation sheet after prior final warnings shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's June 30, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving

unemployment insurance benefits as of June 1, 2009. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs