

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANICE K SIEVERS
Claimant

APPEAL NO: 08A-UI-03339-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SSW ENTERPRISES INC
COLLIS INC**
Employer

**OC: 12/23/07 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Janice K. Sievers (employer) appealed a representative's March 27, 2008 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from SSW Enterprises, Inc. / Collis, Inc. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on April 21, 2008. The claimant participated in the hearing. Debra Bianchi appeared on the employer's behalf and presented testimony from one other witness, Bobbie Becker. One other witness, Michele Anderson, was available on behalf of the employer but did not testify. 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 June 13, 2005. She worked full time as a resistance welder operator at the employer's wire product manufacturing facility. Her last day of work was February 26, 2008. The employer discharged her on that date. The stated reason for the discharge was excessive code of conduct violations.

The employer has a 15-point termination policy for violations of its code of conduct. The lowest level violations are assessed three points. Prior to February 25 the claimant had nine points on file, primarily for work performance issues. On February 25 the claimant was first given a performance counseling with no points assessed early in the day for wasting time and wandering rather than being in her work station during designated work time; later that day she was given a write up with three points for again being away from her work station during designated work time, this time for being on a non-designated smoke break outside. That write up indicated she was at the 12 point and final warning level.

On February 26 the claimant's set lunch break was scheduled for 12:10 p.m. At 11:44 a.m. her supervisor, Ms. Becker, encountered the claimant in the break room heating up food in the microwave. When asked why she was not at her work station as scheduled, the claimant only replied that she had been hungry. She said nothing at that time nor anything later that afternoon when she was brought in for her final discipline about any issue of low blood sugar or a diabetic crisis, as she asserted at the hearing had been the reason for her going for an early lunch.

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.

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.

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 focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

Henry, supra.

The claimant's being away from her work area during scheduled work time after prior warning for similar conduct without a credible showing of some emergency situation 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 March 27, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of February 26, 2008. 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