

**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**

**JAN M RHEA
PO BOX 474
TIFFIN IA 52340-0474**

**ROCKWELL COLLINS INC
c/o TALK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**PATRICIA C KAMATH
ATTORNEY AT LAW
PO BOX 3114
IOWA CITY IA 52244**

**Appeal Number: 06A-UI-02031-CT
OC: 01/27/06 R: 03
Claimant: Respondent (1)**

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:

Rockwell Collins, Inc. filed an appeal from a representative's decision dated February 10, 2006, reference 01, which held that no disqualification would be imposed regarding Jan Rhea's separation from employment. After due notice was issued, a hearing was held by telephone on March 9, 2006. The hearing was recessed and concluded on March 15, 2006. Ms. Rhea participated personally and was represented by Patricia Kamath, Attorney at Law. Deanne Tilton and Penny Gustoff participated pursuant to subpoenas issued on Ms. Rhea's behalf. The employer participated by Trish Wraap, Human Resources Specialist; Dennis Kopf, Human Resources Manager; Doug Anderson, Production Support Manager; and Todd Matrise, Surface Mount Facilitator.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Rhea was employed by Rockwell Collins, Inc. from October 28, 1996 until January 13, 2006. She was last employed full time as an assembly operator. On August 30, 2005, Ms. Rhea was placed on a "last-chance" agreement because she had been abusing her break times. Employees are allowed two 12-minute breaks, one in the morning and one in the afternoon, as well as a 30-minute, unpaid lunch break. The "last-chance" agreement provided that Ms. Rhea would be discharged if she again violated the employer's standards regarding breaks. At the recommendation of her union, she maintained a log at her work station indicating times she left and returned to her work station for various reasons.

On January 13, 2006, Ms. Rhea left for break with Deanne Tilton and Penny Gustoff. She had been trying to go to break with others since being placed on the "last-chance" agreement so that there would be less likelihood of overstaying her breaks. The three returned from break together and had been gone no more than 12 minutes. While Ms. Rhea had been away from her work station on break, the supervisor checked her log and noted that she had left for break at 9:18. He then remained in the area to see what time she would return. He believed she had returned at 9:32 and, therefore, went to notify management that Ms. Rhea had violated the terms of the agreement. As a result of the supervisor's report, Ms. Rhea was discharged on January 13, 2006. The above matter was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Rhea was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Rhea was discharged because she was allegedly two minutes late returning from break on January 13, 2006. The conduct was considered a violation of the terms of the agreement signed on August 30, 2005. The parties disagree as to whether Ms. Rhea did, in fact, take more than 12 minutes for break on January 13. Both parties were equally credible. However, the administrative law judge gives more weight to the testimony from the individuals who accompanied Ms. Rhea to and from break. Both witnesses are still employed by Rockwell Collins, Inc. and would presumably have no reason to fabricate testimony in favor or Ms. Rhea. Both Ms. Tilton and Ms. Gustoff testified that the three did not take even the full 12 minutes allowed for break on January 13. For the above reasons, the administrative law judge concludes that Ms. Rhea did not overextend her break on January 13 and, therefore, there was no misconduct on that date.

Even if the administrative law judge were to find that Ms. Rhea had taken 14 minutes rather than 12 minutes for break on January 13, disqualifying misconduct would still not be established. In order for a disqualification to be imposed, the misconduct complained of must be substantial. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Ms. Rhea was discharged because she took two minutes more for break than allowed. The administrative law judge does not consider this substantial misconduct, the "last-chance" agreement notwithstanding. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service,

337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, the administrative law judge concludes that the employer has failed to satisfy its burden of proving disqualifying misconduct. Accordingly, no disqualification is imposed.

DECISION:

The representative's decision dated February 10, 2006, reference 01, is hereby affirmed. Ms. Rhea was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/tjc