

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CARIE J SPITTLER**  
Claimant

**APPEAL NO. 10A-UI-08582-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REAL TIME STAFFING SERVICES INC  
SELECT STAFFING**  
Employer

**OC: 05/09/10  
Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Select Staffing, filed an appeal from a decision dated June 14, 2001, reference 01. The decision allowed benefits to the claimant, Carie Spittler. After due notice was issued, a hearing was held by telephone conference call on August 3, 2010. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by On-Site Manager Michelle Mutchler.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Carie Spittler was employed by Select Staffing from February 5, 2009 until May 14, 2010. During that time she was on an indefinite assignment as a production worker at Scott Company in Fort Madison, Iowa, working 2:00 p.m. until 10:30 p.m.

On May 10, 2010, Quality Manager Virginia Davis saw the claimant in the “retention room,” a sort of file room that hourly employees were not to enter. Ms. Spittler had her trousers and underwear down. With her was the Senior Line Lead, Justin, who was an employee of the client company. He also had his trousers and underwear down. This was not during a break period.

Ms. Davis contacted Scott Company Human Resources Manager Erich Felkner and the next day he interviewed Justin. That employee admitted he and Ms. Spittler were in the retention room “getting ready to have sex.” He was discharged.

Mr. Felkner notified On-Site Manager Michelle Mutchler of the incident and the two of them interviewed Ms. Spittler that same day. The claimant denied the incident and refused to say anything more. She was suspended pending further investigation. Mr. Felkner gave Ms. Mutchler his notes from the interview with Justin and the statement from Ms. Davis. She reviewed the documentation and consulted with Select Staffing human resources department.

The decision was made to discharge the claimant and she was notified on May 14, 2010, by the on-site manager of the decision.

Carie Spittler has received unemployment benefits since filing a claim with an effective date of May 9, 2010.

**REASONING AND CONCLUSIONS OF LAW:**

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.

The claimant was discharged for inappropriate conduct. She was in an area where she was not authorized to be, away from her workstation, engaged in non-work-related activity during the time she was on the clock. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the

overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of June 14, 2010, reference 01, is reversed. Carrie Spittler is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css