

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE L MULFORD
Claimant

APPEAL NO. 08A-UI-05481-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAVERLY HEALTH CENTER
Employer

**OC: 05/11/08 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Michelle L. Mulford (claimant) appealed a representative's June 5, 2008 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Waverly Health Center (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 25, 2008. The claimant participated in the hearing. Tina Miller appeared on the employer's behalf and presented testimony from one other witness, Brenda Poppens. 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 November 24, 2006. She worked full time as a registered nurse in the birthing center of the employer's hospital on the third shift. Her last day of work was May 6, 2008. The employer discharged her on that date. The reason asserted for the discharge was time clock irregularities relating to her punch in times and not clocking out before taking a rest while on duty.

There had been a number of times the claimant had clocked in substantially after her scheduled 11:00 p.m. start time and had then indicated that she had been at work at an earlier time, but that earlier time did not coincide with when the claimant actually arrived to work in her work area. The most recent incident of this occurred on April 17. On that date she had clocked in at approximately 1:00 a.m. but had indicated that she had been there since about 11:45 a.m. However, she actually arrived in the building at approximately 11:53 a.m. and would have not gotten to her workstation until a few minutes later. The claimant's explanation was that when she was running late she would skip clocking in and would immediately relieve the prior shift's nurse, and would then make a guess as to what time she had actually arrived. On or about April 18 Ms. Poppens, the birthing center manager, counseled the claimant about her lack of

punctuality; however, the payroll department did not provide the detail of the claimant's time clock irregularities to Ms. Poppens until about May 1.

On April 19, the claimant had gone into a room near the nurses' station to rest at approximately 3:12 a.m. and did not leave until about 6:07 a.m. There was not a problem with the claimant actually taking a rest during her shift, but the employer expected that if employees did so, they were to clock out and then clock back in. The claimant forgot to do so. Ms. Poppens was not made aware of this incident until about May 2.

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). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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 reason cited by the employer for discharging the claimant is her time clock irregularities including her failure to clock out for her rest on April 19. While her conduct raises some concern, there is not a current act of misconduct as required to establish work-connected misconduct. 871 IAC 24.32(8); Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988). The most incident in question occurred over two weeks prior to the employer's discharge of the claimant, and was of the type of incident that someone within the employer's organization knew or should have known in a more timely fashion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's June 5, 2008 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css