

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KARINSA K HAYES

Claimant

APPEAL NO: 11A-UI-07686-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CONN COMMUNICATIONS INC

Employer

OC: 05/15/11

Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's June 10, 2011 determination (reference 01) that disqualified her from receiving benefits and held the employer's account subject to charge because the claimant had been discharged for disqualifying reasons. The claimant participated in the hearing with her attorney, Dennis Mitchell. Stacey Hall, the sales manager, and Chad Boyer appeared on the employer's behalf.

On July 5, 2011, the employer requested a continuance. The administrative law judge left the employer a message that based on the faxed letter, the requested continuance was denied because the employer did not make a timely request. The employer was also told that if the employer wanted to renew the request, the employer had to personally talk to the administrative law judge to explain why the employer wanted the postponement. The employer did not personally contact the administrative law judge.

Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons that constitute work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in May 2005. She worked full time as a store manager. During her employment, the employer did not give the claimant any written warnings. Hall remembered talking to the claimant on February 24, 2011, about reporting to work on time, but the claimant did not recall such a conversation.

On April 22, 2011, sometime before 9 a.m., Hall warned the claimant she could not leave the store when there was not adequate coverage. Although Hall also remembers telling the claimant that employees had only 30 minutes for lunch and all lunches had to be finished by 2 p.m., the claimant understood Hall's discussion focused on adequate coverage for the store,

not the length of lunches. On April 22, the claimant was gone from the store from 2:24 to 3:32 p.m. When Hall asked the claimant why she was gone during this time, the claimant explained that since she had adequate coverage she believed it was all right for her to be away from the store.

After April 22, Hall did not look at the claimant's attendance record until May 11. On May 12, Hall learned the following:

April 26	the claimant took her lunch from 12:32 to 1:19 p.m.
April 27	the claimant clocked in 8 minutes late
April 29	the claimant clocked in 6 minutes
May 3	the claimant clocked out at 2:23 but was scheduled until 2:45 p.m.
May 4	the claimant clocked in 2 minutes late and took a 45 minute lunch
May 9	the claimant clocked out at 2:48 p.m., but was scheduled until 5 p.m.
May 10	the claimant took a 45 minute lunch
May 11	the claimant took a 46 minute lunch

On May 12, the employer decided to discharge the claimant because she missed too much work. Although Hall believed she told the claimant on April 22 she had to work as scheduled, take only a 30-minute lunch and complete her lunch by 2 p.m., the claimant recalled Hall telling her she could not leave the store without adequate coverage.

During this time period at issue the claimant was taking care of personal matters. The claimant understood Hall knew she had personal issues and had appointments during her lunch to address these issues. On May 3, the claimant had not taken a lunch so she punched out at 2:23 p.m. for her lunch and then did not return to work after her lunch. There were also days the claimant had appointments at school, which she may have had on May 9.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work_connected misconduct. 871 IAC 24.32(1)(a).

The problem with verbal warnings versus written warnings is illustrated in this case. On April 22, the claimant remembered Hall's focus was to have adequate coverage at her store.

Hall, however, wanted the claimant to work as scheduled, only take a 30-minute lunch and have lunches completed by 2 p.m. Hall and the claimant could communicate by email. It would have been simple for Hall to send the claimant an email after the April 22 discussion verifying what Hall expected the claimant to do, but she did not.

More importantly, the April 22 discussion did not put the claimant on notice that if she took more than a 30-minute lunch break, did not complete her lunch break before 2 p.m. and did not work as scheduled her job was in jeopardy. While the claimant was not a "perfect" employee, she did not commit work-connected misconduct. She used poor judgment when she kept her April 22 nail appointment and may not have reinforced the fact she had appointments during lunch and had to go to school to resolve a personal issue, but she did not intentionally disregard the employer's interests. As of May 15, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's June 10, 2011, reference 01, determination is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of May 15, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs