

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELANIE A JONDAL**  
Claimant

**APPEAL NO. 10A-UI-10807-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TRINITY REGIONAL MEDICAL CENTER**  
Employer

**OC: 06/20/10**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Melanie Jondal (claimant) appealed a representative's July 22, 2010 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Trinity Regional Medical Center (employer) for conduct not in the best interest of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 16, 2010. The claimant participated personally. The employer participated by Ted Vaughn, Human Resources Manager, Sandra Price, Supervisor Case Management and Social Services.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 7, 2008, as a part-time case manager. The claimant signed for receipt of the employer's handbook on April 7, 2008. The employer did not issue the claimant any warnings during her employment. The employer talked to the claimant on March 31, 2010, about a dispute at work.

On June 15, 2010, the claimant did not take a lunch break. Another employee said the claimant took a 30-minute lunch break. The same employee said the claimant was sitting on her boyfriend's knee in the private break room. The claimant did not know that sitting on her boyfriend's knee was inappropriate behavior. The two were sitting near each other to read a small newspaper advertisement. The claimant was tardy for work 21 times in the last 63 days of employment but the employer never issued her a warning or talked to her about her attendance. The claimant always made up her time at the end of the day as she was instructed by her previous supervisor. The employer knew about the claimant's actions each day. The employer viewed a video of the claimant and her boyfriend entering and exiting the break room but the video did not show both doors to the room.

On June 24, 2010, the employer terminated the claimant for falsifying her time record on June 15, 2010, sitting on her boyfriend's knee in the private break room, and being tardy on June 16, 2010.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer had the power to present testimony of the employee regarding the lunch break on June 15, 2010, but chose not to do so. The employer did not provide first-hand testimony at the

hearing and, therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct.

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as employer had not previously warned claimant about tardiness or behavior in the break room, it has not met the burden of proof to establish that claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's July 22, 2010 decision (reference 02) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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