

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGEL E WELCH
Claimant

APPEAL NO. 12A-UI-08530-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MATRIX METALS LLC
Employer

OC: 06/24/12
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated July 13, 2012, reference 01, which allowed benefits without disqualification. After due notice was provided, a telephone hearing was held on August 9, 2012. The claimant participated. The employer participated by Ms. Linda Leffler, human resource assistant.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Angel Welch was employed by Matrix Metals LLC from August 8, 2011, until June 21, 2012, when she was discharged for knowingly allowing another employee to punch her out on the company's timekeeping system. Ms. Welch was employed as a full-time welder and was paid by the hour.

Based upon information that had been given to the employer, the employer believed that Ms. Welch and another male employee had violated the company's punch-in/punch-out policy. On June 19, 2012, a number supervisors, as well as the plant superintendent, were observing a male employee and personally observed that individual punching Ms. Welch out on the company's timekeeping system at the end of the day. At the time of the punch-out, Ms. Welch was not at the timecard location. A subsequent meeting with the claimant was held and it was determined at that time that Ms. Welch had knowingly allowed the other individual to punch her out on a number of previous occasions, as well as on June 19, 2012.

Company employees are informed at the time of hire of the requirement that they personally punch in and out and are aware that allowing another individual to punch them in or out or punching another individual in or out can result in immediate termination from employment. Company employees are reminded of the rule periodically by the company re-posting the punch-in/punch-out requirements.

It is the claimant's position that she was in another area of the facility "cleaning up" and therefore allowed a male worker to punch her out to save time. It is the claimant's further position that two or more supervisors were aware of the practice and had condoned it.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

In this matter, the evidence is undisputed that Ms. Welch knowingly allowed another employee to punch her out in violation of the company's punch-in/punch-out rules. The evidence also establishes that Ms. Welch was aware of the company requirement that employees personally punch in and punch out and that policy does not allow other individuals to punch an employee in

or out at the beginning or end of work shifts. The administrative law judge finds the claimant's testimony that the practice was condoned by supervisors to strain credibility.

The administrative law judge concludes that the claimant knew or should have known that allowing another individual to punch her out was a violation of the company's strict punch-in/punch-out rules and could result in her termination from employment. The purpose of the rule is to ensure the company properly pays employees for their services and that the employer is properly aware of who is on duty and who is off duty for both pay and liability reasons.

Because the claimant's willful conduct showed a disregard for the employer's interests and standards of behavior, the administrative law judge concludes the claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld.

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 issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

DECISION:

The representative's decision dated July 13, 2012, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw