IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MAURICE A SOTECO Claimant **VON MAUR INC** Employer	**APPEAL NO. 11A-UI-06171-SWT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 04/03/11** **Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 2, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 13, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Michelle Farmer participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a stock associate from August 14, 2006, to April 7, 2011. He was informed and understood that under the employer's work rules, deception in time-keeping records and excessive breaks were grounds for termination. Employees are entitled to two 15-minutes paid breaks for which they are not required to punch out and one meal break for which employees are required to punch out.

On April 5, 2011, the claimant was scheduled to work from 7:00 a.m. to 4:00 p.m. On the way to work the claimant experienced severe problems with his car so that he could only drive about 15 miles per hours. He arrived at work on time. Sear Auto Repair is located next to the employer's business and opens at 8:00 a.m. The claimant called Sears at 8:00 a.m. He was told that if he brought the car in right away, a technician could look at it. The clamant consulted with his coworkers indicating that he was going to take his 15-minute break to run the car over to Sears. They indicated it wasn't a problem. The claimant was not required to punch for a 15-minute break and did not do so.

The claimant took his car to Sears. The technician told him that the repair would need to be done at the dealership. The claimant dropped the car at the dealership and return to work, but was gone from about 8:14 to 9:04 a.m. overstaying his break time by 35 minutes. The claimant did not call anyone to let them know he was delayed returning to work. When he got back to work, he reported to the store manager about what had happened and told her that he owed the store 35 minutes. The store manager told him she would take care of it. The store manager checked surveillance video to find that the claimant was gone from 8:14 to 9:04 a.m. She

misheard what he said and believed that he had misrepresented that he was gone for 35 minutes when it was actually 50 minutes.

On April 7, 2011, the store manager discharged the claimant for deception in time-keeping records based on her belief that he had misrepresented the time he was gone on April 5, 2011.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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 substantial and 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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant’s testimony that he told he owed the store 35 minutes. He did not misrepresent information to the store manager. At most the reflects an error in judgment in not calling the store to let a supervisor know that he was going to be late coming back from his break, but this would not constitute disqualifying misconduct under the facts of this case.

DECISION:

The unemployment insurance decision dated May 2, 2011, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

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