

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RALENE M LUDVIGSEN
Claimant

APPEAL NO. 10A-UI-09506-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROCK-TENN CONVERTING CO
Employer

**OC: 05/30/10
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Ralene Ludvigsen, filed an appeal from a decision dated June 30, 2010, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 24, 2010. The claimant participated on her own behalf. The employer, Rock-Tenn Converting, participated by Human Resources Manager Rose Duax and Department Manager Mark Henry.

ISSUE:

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

FINDINGS OF FACT:

Ralene Ludvigsen was employed by Rock-Tenn Converting from August 19, 2002 until June 8, 2010 as a full-time finishing operator. The employer's attendance policy is administered on a points basis on a rolling 12-month time period. Warnings are given under the progressive disciplinary procedure when an employee reaches certain point levels.

Ms. Ludvigsen was given a final written warning on May 4, 2010, when she reached ten points. The warning reminded her she could be discharged if she reached a total of 12 points. After that warning the claimant left early on May 10, 2010, to take her grandchildren to the doctor. On May 27, 2010, she was scheduled to work 3:00 p.m. to 3:00 a.m. and punched out at 2:59 a.m. Her relief had arrived and she left her work station, went to the locker room to change her shoes and saw that the clock there said 3:00 a.m. When she punched out she did not look at the digital read out on the time clock and her clock out time was one minute early. She then was on vacation until June 7, 2010, and when she returned to work the next day she was discharged for having accumulated 12 points.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The employer's policy mandates a discharge when an employee accumulates 12 points and the claimant was aware of this. But the employer's policy is not controlling in determining whether an individual may receive unemployment benefits. The final incident was when the claimant inadvertently punched out one minute before the end of her shift. She had been relieved by another employee and so there was no abandonment of that work station which could have harmed the production line. The clock in the locker room said 3:00 a.m. and she simply did not consider that the time clock might not have been synchronized with the other clock.

The issue is not whether the employer made a correct decision in separating the claimant, 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 misconduct warrants denial of unemployment benefits are two separate decisions. *Pierce v. IDJS*, 426 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Newman v. IDJS*, 351 N.W.2d 806 (Iowa App. 1984).

There was no wrongful intent when the claimant punched out at 2:59 a.m. instead of 3:00 a.m. As there was no current, final act of misconduct under the provisions of 871 IAC 24.32(8), disqualification may not be imposed.

DECISION:

The representative’s decision of June 30, 2010, reference 01, is reversed. Ralene Ludvigsen is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs