

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JUANITA REYNAGA**  
Claimant

**APPEAL NO. 08A-UI-10965-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS DAIRY INC**  
Employer

**OC: 10/12/08 R: 01**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the November 10, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on December 8, 2008. Claimant participated. Employer participated through Alfredo Marino and was represented by Jennifer Coe of Talx UC Express. Employer's Exhibit 1 (pages 1, 3 and 4) was received.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was hired as a full-time assistant machine operator and worked from April 18, 2005 until October 15, 2008 when she was discharged for allegedly taking 23 minutes on what was supposed to be a 15-minute paid break on October 14 and being away from her work station for 42 minutes on a 30-minute unpaid lunch break. Her supervisor was aware that because the crew that normally was assigned to take waste barrels upstairs was generally busy in other areas of the plant, she and sometimes her immediate lead worker/machine operator would take the barrels upstairs on their way to break before clocking out for break or going to the break room. The elevator used to transport the barrels was generally used often enough that claimant had to wait up to 15 minutes for its use. The disciplinary memos in the exhibits refer to a supervisor's observations but are not supported by time data entries for the breaks at issue. The November 7, 2007 disciplinary notice was not about break time but the October 18, 2007 warning and one-day suspension were issued for a similar issue.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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). The issue is not whether the employer made a correct decision in separating 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 insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 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. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, 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. Because the employer did not match the alleged observed extended break times with the actual time data claimant entered for her breaks when taking barrels upstairs, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

**DECISION:**

The November 10, 2008, reference 01, decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs