

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN J MARTINDALE
Claimant

APPEAL NO. 09A-UI-01181-H

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRO ALLIANCE LLC
Employer

OC: 12/28/08
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Susan Martindale filed an appeal from a decision of January 22, 2009, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held in Sioux City, Iowa on May 14, 2009. The claimant participated on her own behalf. Gro Alliance participated by Human Resources Manager Rod Mau, Plant Coordinator Chad Harding, Site Manager Paul Robertson and Field Facility Coordinator Neal Biekert.

ISSUE:

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

FINDINGS OF FACT:

Susan Martindale was employed by Gro Alliance from July 2000 until December 23, 2008 as a full-time laborer. The company policy gives employees a 30-minute lunch break. The employees do not have to punch out unless they leave the facility. If they leave the work site they must punch in and out for the meal break.

On December 22, 2008, the claimant was scheduled to work from 6:00 p.m. until 6:00 a.m. At 8:00 p.m. Field Facility Coordinator Neal Biekert arrived and found no one at the processing area. He searched through the entire area including the conditioning tower where she was assigned to work, and the shop in case something had broken down she needed to fix. He continued to look through the warehouse, the bagging area, receiving area, and the dock. Ms. Martindale was not there. Around 9:00 p.m. he called Plant Coordinator Chad Harding and was told to stay awhile longer. Finally at 10:30 p.m. he locked the doors and shut off the lights after punching out Ms. Martindale on her time card. Mr. Harding arrived around 10:30 p.m. or 11:00 p.m. and he also walked through the facility and found no one. The next day the claimant was discharged by phone by Site Manager Paul Robertson.

Ms. Martindale did not dispute she had been gone from the facility for between two and four hours. She and another employee had gone to lunch. She provided no explanation as to why the lunch break took such an excessively long time or why she did not punch out.

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.

The claimant was discharged for abandoning her work and leaving the facility unattended. While she was entitled to a lunch break, she was also required to punch out if she was going to leave the facility which she did not do. In addition, the employer provides for a 30-minute lunch break and the claimant was gone between two and four hours. She did not have permission from a supervisor to be gone that long nor did she notify anyone she would be absent from work for that period of time. This is a violation of the duties and responsibilities the employer has the right to expect of an employee. She was on the clock for an excessive period of time without performing any work. This is conduct not in the best interest of the employer and the claimant is disqualified.

DECISION:

The representative's decision of January 22, 2009, reference 01, is affirmed. Susan Martindale is disqualified and benefits are withheld until she has requalified by earning ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs