

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRACEY L THOMAS**  
Claimant

**APPEAL NO. 12A-UI-07790-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**INDIANOLA COMMUNITY SCHOOL DIST**  
Employer

**OC: 06/03/12**  
**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated June 21, 2012, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 31, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Trent Grundmeyer participated in the hearing on behalf of the employer. Exhibits A and One through Four were 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 an attendance secretary from August 1999 to May 11, 2012. In 2007, the employer instituted a time clock system and instructed employees, including the claimant that she was required to record her time accurately including logging in at the start of her shift, logging out and in for her lunch break, and logging out at the end of the shift. She was informed and understood that failing to log in or out as directed could result in disciplinary action up to discharge. The claimant's work hours were from 7 a.m. to 3:15 p.m. with a half-hour unpaid lunch break.

The claimant adopted a practice of logging out for lunch around 11:30 a.m. but continuing to work and logging back in about 30 minutes later. She would then take a lunch break without having an accurate record of when she left and when she returned. She adopted this practice because she sometimes would have something come up at work so she could not leave for lunch immediately after logging off. There were times when the claimant took more time off for lunch than was reflected on the time records and a couple times when she took less time for lunch than was reflected on the time records.

In April 2012, the high school principal, Trent Grundmeyer, noticed times when he would stop to see the claimant after 12:30 a.m. and find that she was at lunch. He checked the time records and discovered the claimant had logged off for lunch at around 11:30 a.m. and logged back in

around noon. He began monitoring the claimant's whereabouts over the lunch period and observed the following discrepancies in time records versus actual time away from work:

<u>Date</u>	<u>Time Card Time</u>	<u>Actual Time Away</u>
April 16	11:33-12:04	12:00-1:04
April 23	11:27-11:53	12:08-12:51
April 24	11:32-11:55	12:05-12:52
April 25	12:40-1:09	11:30-12:45 (Secretary Day's Lunch)
April 30	11:36-12:03	12:10-12:38
May 1	11:25 (no log in time)	12:15 (Time left no return time noted)
May 3	11:29-12:03	12:15 (Time left no return time noted)
May 4	11:30-11:55	12:00 (Time left no return time noted)
May 7	11:37-12:04	12:06-12:40
May 8	11:34-12:05	12:00 (Time left no return time noted)
May 9	12:03-12:33	12:05-12:35
May 10	12:07-12:44	12:09-12:46

At about 1 p.m. on May 8, the claimant sent an email to the payroll clerk stating that she did not get signed back in after lunch. She asked the payroll clerk to modify her time to reflect she got back from lunch at 12:05 p.m., which was a false entry. When the payroll clerk replied that she was forwarding the email to Grundmeyer, the claimant started accurately logging out and in for lunch on May 9 and 10.

On May 11, 2012, Grundmeyer confronted the claimant about the discrepancies in her time records. The claimant admitted the time records did not accurately reflect the actual times she took lunch. Initially, the claimant submitted a resignation, but she later retracted her resignation. She was placed on leave without pay pending an investigation into the time recording situation. On May 24, 2012, the associate superintendent, Brad Jermeland, informed the claimant in writing that she was being terminated for violating the procedures for keeping accurate time records.

The claimant filed for and received a total of \$5,773.00 in unemployment insurance benefits for the weeks between June 3 and September 15, 2012.

#### **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 § 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 claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the

employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The claimant knew that she was reporting inaccurate times for leaving for lunch and returning for lunch. The employer instituted a time clock system to assure that the times were being recording properly. Even if the "hours worked" discrepancies were not huge, the times of the claimant's actual breaks were way off and the claimant knew it. She knew that she had not returned from lunch at 12:05 p.m. on May 8 yet asked the payroll clerk to enter a false time. The fact that the claimant started logging off properly at around noon after the payroll clerk notified her on May 9 that she had forwarded her request to Grundmeyer is evidence that the claimant knew what she was doing was wrong.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

**DECISION:**

The unemployment insurance decision dated June 21, 2012, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

---

Steven A. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

saw/pjs