

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA TROSKY
Claimant

APPEAL NO: 14A-UI-05396-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANTAGE CUSTOM BUILDERS INC
Employer

OC: 04/20/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 15, 2014, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 16, 2014. The claimant participated in the hearing. Chad Keune, President, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time assistant project coordinator for Advantage Custom Builders from April 3, 2013 to April 24, 2014. She was discharged for excessive missed time clock punches and tardiness.

The employer installed a new electronic time keeping system at the end of February or beginning of March 2014. Employees swiped their fingerprint over a scanner on their computers to clock in and out. The employer also had employees continue doing their paper time sheets as a backup.

On March 10, 2014, the claimant forgot to punch in; on March 18, 2014, she forgot to punch in or out for lunch; on April 2, 2014, she was late returning from lunch and used personal time which is not allowed without prior approval; on April 4, 2014, she forgot to punch in or out for lunch; on April 9, 2014, she took extra time at lunch to visit her aunt who was hospitalized under emergency circumstances and she told the operations manager and emailed the employer she would be gone longer than her one hour lunch break; on April 16, 2014, she forgot to punch in; on April 22, 2014, she was tardy but neither party knows how late she was or why; and on April 23, 2014, she was absent due to properly reported illness. The employer terminated her employment April 24, 2014.

When the claimant became aware of a missed punch she notified the bookkeeper. On January 9, 2014, she received a written warning regarding tardiness and was told the next incident would result in termination of her employment. The claimant did not believe her job was in jeopardy, however, because she was not discharged following her next incident of tardiness.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. 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). Absences due to

properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

The claimant forgot to punch in or out for work and/or lunch on four occasions between March 10 and April 24, 2014. Four of the dates listed by the employer were failures to use the time clock and two were due to taking a longer lunch and using personal time without prior approval. On one occasion the claimant was tardy and the final incident of absenteeism was the result of a properly reported absence due to illness. The employer had a new time-keeping system and the claimant did not catch on to the system as well as the employer expected. While somewhat careless, there is no evidence that the claimant's actions were intentional as evidenced by the fact she reported her missed punches to the bookkeeper to be corrected. Under these circumstances, the administrative law judge must conclude the employer has not established disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The May 15, 2014, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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