

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ANGELA M BENSON
1108 – 17TH ST APT 61
PO BOX 3201
SIOUX CITY IA 51102

INTERBAKE FOODS INC
1 DEVILS FOOD RD
N SIOUX CITY SD 57049

Appeal Number: 06A-UI-01167-H2T
OC: 05-01-05 R: 01
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 20, 2006, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on February 16, 2006. The claimant did participate. The employer did participate through John Kreber, Assistant Human Resources Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a general packing helper full time beginning May 10, 2004 through December 30, 2005, when she was discharged.

The claimant was discharged for taking an excessively long work break on December 27, 2005. Under the work rules, which the claimant was aware of, she was allowed a 15-minute break during the middle of her work shift. The employer's records indicate that the claimant took a break lasting 28 minutes. When the claimant was asked why she took such a long break, she indicated that she had only taken 15 minutes, but had stopped at the nurses station after her break to talk to the nurse about pain in her legs that she was visiting the doctor for that very evening. The employer admits that the claimant did visit the nurse and that she did seek medical treatment that evening for the condition she discussed with the nurse on December 27, 2005. The nurse instructed the claimant to report any work restrictions she received from the doctor the next day. The claimant did not tell her Supervisor that she would be visiting the nurse after her break nor did she seek permission to visit the nurse.

The claimant had previously been disciplined for taking too long at break, but no previous situation involved a nurse's visit.

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 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 employer discharged the claimant and has the burden of proof to show misconduct. 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). The claimant should have obtained permission from her supervisor to visit the nurse, or at the very least told the Supervisor she would be visiting the company nurse. The claimant was late coming back from her allotted break time because she stopped to visit about leg pains with the company nurse. The claimant's failure to obtain permission or to notify her supervisor that she was visiting the nurse is not misconduct substantial enough to disqualify her from receiving unemployment insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The January 20, 2006, reference 03, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/kjw