

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**PATTY MEYER**  
Claimant

**FBG SERVICE CORPORATION**  
Employer

**APPEAL 20A-UI-11560-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/12/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

Patty Meyer (claimant) appealed a representative's September 15, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with FBG Service Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 13, 2020. The claimant participated personally. The claimant's husband, Billy Meyer, and daughter Bobbi Gogel, participated in the hearing on the claimant's behalf. The employer was represented by Jacqueline Jones, Hearings Representative, and participated by Jamie Losch, Operations Manager; Lori McGaffic, Operations Supervisor; and Pam Kincaid, Human Resources Manager. The administrative law judge took official notice of the administrative file.

**ISSUE:**

The issues include whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 13, 2017, as a full-time cleaning specialist. She signed for receipt of the employer's handbook and Teleteam Procedures on July 13, 2017. The procedure laid out guidelines for time reporting through a landline in the building where the employee worked. The policy stated that employees would be assigned a phone and that would be the only phone to use for time reporting. Cellphone use for time reporting would not be allowed. The policy notified workers that failure to follow the procedures could result in separation from employment.

The operations manager and operations supervisor talked to the claimant about her repeated use of her personal cellphone to report her arrival at the worksite and failure to follow instructions. The operations supervisor recorded multiple occasions of the claimant reporting

her arrival and not being on site. On July 10, 2020, the claimant clocked in with her cellphone and was not on site. On July 13, 2020, the employer terminated the claimant for time theft.

The claimant filed for unemployment insurance benefits with an effective date of July 12, 2020. Her weekly benefit amount was determined to be \$488.00. The claimant did not receive state unemployment insurance benefits or Federal Pandemic Unemployment Compensation after July 12, 2020.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The claimant clearly disregarded the standards of behavior, which an employer has a right to expect of its employees. The claimant's actions were volitional. She intentionally failed to follow instructions and clocked in

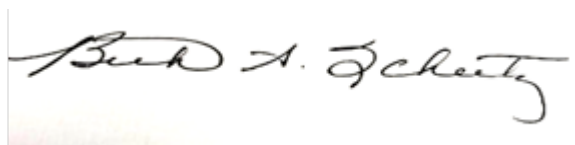
using her cellphone when she was not at the worksite. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

**DECISION:**

The representative's September 15, 2020, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



---

Beth A. Scheetz  
Administrative Law Judge

November 20, 2020  
Decision Dated and Mailed

bas/scn