

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DANIELLE N BELL  
2314 PARK AVE  
GRANGER IA 50109-8052**

**ANNETT HOLDINGS INC.  
C/O THOMAS & CO  
PO BOX 280100  
NASHVILLE TN 37228**

**DIA APPEAL NO. 21IWDUI0093  
IWD APPEAL NO. 20A-UI-08464**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APPEAL RIGHTS:**

**This Decision Shall Become Final**, unless within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of the decision, 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:

*Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
or  
Fax (515) 281-7191*

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.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

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.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

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**ONLINE RESOURCES:**

UI Appeals: <http://www.iowaworkforce.org/ui/appeals/index.html>

Claimant Handbook: <http://www.iowaworkforce.org/ui/handbook.htm>

Handbook for Employers: <http://www.iowaworkforce.org/ui/uiemployers.htm>

Employer account access and information: <https://www.myiowaui.org/UITIPTaxWeb/>

National Career Readiness Certificate through the Skilled Iowa Initiative: <http://skillediowa.org/>

Becoming a member employer through Skilled Iowa and utilizing internships: <http://skillediowa.org/>

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DANIELLE N BELL**  
Claimant

**ANNETT HOLDINGS INC.**  
Employer

**DIA APPEAL NO. 21IWDUI0093  
IWD APPEAL NO. 20A-UI-08464**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/10/20  
Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quit  
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the July 10, 2020, (reference 01) unemployment insurance decision that denied unemployment insurance benefits based upon a finding that the claimant failed to perform satisfactory work. A hearing was held on September 8, 2020, and the entire administrative file was admitted into the record. In addition, two exhibits were admitted by the employer and three exhibits were admitted by the claimant. Claimant appeared and was self-represented. The employer was represented by Sasha Monthei, Vice-President of Risk Management Communications. One witnesses appeared on behalf of the Employer, Stacey Sick-Miller, Corporate Communications Manager. The matter is now fully submitted.

**ISSUE:**

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a Public Relations Coordinator. Claimant was employed from February 20, 2017 until May 12, 2020 when she was discharged from employment. Claimant's job duties included managing communications internally and externally, writing press releases, bio sheets, publications, and coordinating corporate functions. Stacey Sick-Miller was claimant's immediate supervisor.

The employer has a written disciplinary policy in place that states that a violation of its personal policies and unsatisfactory performance could lead to corrective action, up to and including discharge. The employer also has a policy that improper use of a cell phone could result in discharge. Claimant signed an acknowledgement of the policies.

The final incident leading to discharge occurred in May 2020. Claimant had missed deadlines at work and when spoken to about the missed deadlines, claimant stated that she did not have time to complete the projects. However, after discussing the fact that claimant was missing deadlines, claimant was observed using her cell phone during work hours for personal use, including watching videos on her cell phone. On May 12, 2020, claimant's employment was ended due to her failure to meet deadlines and excessive cell phone use.

Claimant had been spoken to about her cell phone use and meeting deadlines prior to the final incident. Her immediate supervisor had spoken to claimant on three prior occasions. During claimant's yearly evaluation, her supervisor spoke to claimant about her failure to meet deadlines and asked her to improve in this area. In March 2020, claimant's supervisor spoke to the claimant about her cell phone use stating that she used her cell phone too much and needed to limit the time spent on her cell phone. Between March 2020 and when claimant was discharged, she was spoken to on one additional occasion regarding cell phone usage and missed deadlines.

Although claimant had been spoken to about her use of her cell phone and missed deadlines, claimant was still observed on her phone after the warnings and her work was still not being completed on time. The employer stated that claimant's failure to meet her deadlines caused inefficiencies in the company because communications were not delivered and necessary information was not received.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged for job-related misconduct. Benefits are denied.

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the Administrative Law Judge finds that the testimony provided by the witnesses for the employer, Ms. Monthei and Ms. Sick-Miller, is more credible than claimant's testimony.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). 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 Bd.*, 616 N.W.2d 661 (Iowa 2000). A lapse of 11 days from final act until discharge when claimant was notified on fourth day that his conduct was grounds for dismissal did not make final act a "past act". *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

This case does not involve an incident of carelessness or just poor work performance. Claimant intentionally failed to perform her job and instead spent time on her cell phone. Although claimant argued that missed deadlines were not discussed with her, claimant's performance evaluation in February 2020 specifically states that timeliness was an issue that needed improvement. Further, it is undisputed that claimant was warned that her use of her cell phone was a problem and that she needed to limit her cell phone use. Despite these warnings, claimant intentionally continued to use her cell phone instead of performing her job duties, causing harm to her employer. It is

clear that claimant's actions were intentional and they were a substantial violation of the employer's policies and procedures.

The employer has a right to expect that an employee will perform her employment duties and not spend excessive time on personal matters in violation of policies that are in place. There is substantial evidence in the record to support the conclusion that claimant deliberately violated these rightful expectations in this case. Accordingly, the employer has met its burden of proof in establishing that the claimant's conduct consisted of deliberate acts that constituted an intentional and substantial disregard of the employer's interests. These actions rise to the level of willful misconduct. As such, benefits are denied.

**DECISION:**

The July 10, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. Benefits are withheld in regards to this employer until such time as claimant is deemed eligible.



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Rachel D Morgan  
Administrative Law Judge  
Department of Inspections and Appeals  
Administrative Hearings Division

9-9-20

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Decision Dated and Mailed

RDM/lb

CC: Danielle Bell, Claimant (by first class mail)  
Annett Holdings, Inc, Employer (by first class mail)  
Nicole Merrill, IWD (email)  
Joni Benson, IWD (email)

*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>.