

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TONY A HOFFMAN
Claimant

MIDWESTERN TRADING INC
Employer

APPEAL NO: 12A-UI-02452-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/22/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

The claimant appealed a department decision dated February 27, 2012, reference 01, that held he was discharged for misconduct on January 20, 2012, and benefits are denied. A telephone hearing was held on March 28, 2012. The claimant and employer did not participate. Official Notice was taken of Employer Exhibit One that was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant began employment as a full-time forklift driver on February 14, 2011, and last worked for the employer on January 20, 2012. The claimant knew that he was not authorized to carry and use the company phone for any purpose.

The employer/owner received a public complaint from a lady about receiving a nasty text message that was from a company phone. Upon investigation, the employer determined it was claimant that had taken the company phone and he was responsible for the text message. Although claimant denied the incident, the employer had determined it had sufficient evidence to identify claimant as the employee that used the phone to send the message.

Claimant failed to respond to the hearing notice. The employer was contacted about a prior hearing running over that conflicted with the start time, and later agreed to have this matter submitted on the record.

REASONING AND CONCLUSIONS OF LAW:

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.

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.

The administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on January 20, 2012, for unauthorized use of a company phone and sending an inappropriate text message.

The claimant employer policy violation constitutes job disqualifying misconduct.

DECISION:

The department decision dated February 27, 2012, reference 01, is affirmed. The claimant was discharged for misconduct on January 20, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs