

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SAM T WEAHN
Claimant

MOSAIC
Employer

APPEAL 17A-UI-13403-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/22/17
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Sam T. Weahn (claimant) filed an appeal from the December 18, 2017, reference 03, unemployment insurance decision that denied benefits based upon the determination Mosaic (employer) discharged him for violation of a known company policy. The parties were properly notified about the hearing. A telephone hearing was held on January 24, 2018. The claimant participated. The employer was represented by Thomas Kuiper of Talx and participated through Human Resource Generalist Vickie Hernandez, Human Resource Manager Shanda Hiatt, and Program Manager Molly Brown. The Employer's Exhibit 1 was received without objection.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Direct Support Associate beginning on May 11, 2015, and was separated from employment on October 23, 2017, when he was discharged. The claimant was responsible for providing assistance to clients with development disabilities who needed assistance and supervision at all times. The employer has a policy that allows personal cell phone use only when authorized by a supervisor and encourages employees not to use personal phones when at work because they should be focused on providing care to the clients.

On February 21, 2017, the claimant received a verbal coaching from his former supervisor Shelby Miller regarding cell phone usage. The claimant received a written warning for an incident that occurred on February 23, 2017, when the Program Coordinator observed him with ear buds in his ear and cell phone out while on duty. On July 20, 2017, the claimant received a final warning for an incident that occurred on July 9, 2017. The claimant's new supervisor Chelsea Smith observed the claimant sitting on the couch with his cell phone out on a personal call. She had to ask him to end the phone call. The claimant was told any further infractions of the employer's cell phone use policy could result in discharge.

On October 18, 2017, Program Manager Molly Brown received complaints from a client through another service provider regarding the claimant's cell phone use while at work. Brown started an inquiry and learned that all staff and clients observed the claimant on his cell phone during work. On October 19, 2017, the claimant was again observed on his phone. The claimant reported to Brown that he was speaking with his supervisor. Brown contacted Smith who denied she had spoken to the claimant that day. The claimant was suspended and later discharged on October 23, 2017, for violation of the cell phone use policy.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa Administrative Code rule 871-24.32(1)a provides:

“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 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 must be “substantial” to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

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.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events.

The employer has a policy limiting personal cell phone use as it detracts from the time and attention to be given to clients. The employer's direction to limit personal cell phone use is reasonable. The employer has presented substantial and credible evidence that the claimant continued using his personal cell phone during work time after having been warned. It has met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Accordingly, benefits are denied.

DECISION:

The December 18, 2017, reference 03, unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn