

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RUSSELL A SINGER**  
Claimant

**APPEAL NO. 16A-UI-09630-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KARL CHEVROLET**  
Employer

**OC: 08/07/16  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated August 25, 2016, reference 02, which denied unemployment insurance benefits finding the claimant was discharged from work on August 8, 2016 for violation of a known company rule. After due notice was provided, a telephone hearing was held on September 21, 2016. Claimant participated. The employer participated by Mr. Andrew Blair, Shipping/Receiving Supervisor, and Mr. Jason Roach, Parts Department Director.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct in connection with his work.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Russell Singer was employed by Karl Chevrolet from June 6, 2016 until August 8, 2016 when he was discharged from employment. Mr. Singer was employed as a full-time parts delivery driver and was paid by the hour. His immediate supervisor was Andrew Blair.

Mr. Singer was discharged on August 8, 2016 when he was observed by both his supervisor, Mr. Blair, and by the Parts Division Director, Mr. Roach, violating the company's prohibition of personal cell phone use at the place of employment. Company policy strictly prohibits smoking or the use of cell phones by employees at the Karl Chevrolet facility. Employees are informed of the rule and Mr. Singer had been repeatedly verbally warned about violating the rule prior to his discharge.

Company parts drivers are allowed to use personal cell phones for business-related purposes while going to and from deliveries but are specifically informed that cell phone use is prohibited at the employer's "campus" without exception.

It is Mr. Singer's position that he was merely "maintaining" his cell phone for checking available minutes when he was observed by company management.

## 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.

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).

Since the claimant was discharged, the employer has the burden of proof in this matter. See Iowa Code 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In the case at hand, the claimant was well aware of the company policy which strictly prohibited employees from the use of cell phones for any reason at the employer's work location. Mr. Singer had not only been advised of the rule but had received numerous verbal warnings prior to his discharge on August 8, 2016. On that date, the claimant was observed by two management individuals using his cell phone and the claimant did not deny or explain his conduct when he was observed or when he was being discharged from employment.

The administrative law judge concludes the claimant knew that his conduct was in violation of the company policy and had been placed on notice that violation of the policy could result in his termination from employment.

Although sympathetic to claimant's situation, the administrative law judge concludes the claimant's conduct was intentional and in violation of a known company policy. Accordingly, the claimant is disqualified from the receipt of unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

**DECISION:**

The representative's decision dated August 25, 2016, reference 02, is affirmed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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