

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANIELLE DAVIS**  
Claimant

**APPEAL NO: 12A-UI-08741-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**L A LEASING INC**  
Employer

**OC: 04-22-12**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the July 18, 2012, reference 06, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 15, 2012. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Chad Baker, workers' comp administrator for the corporate office, and James Cole, site manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time industrial lead for Sedona Staffing last assigned to Rock Tenn Company from June 15, 2012 to June 21, 2012. The claimant was working on the line when she asked if she could use the restroom around 10:00 a.m. and was given permission to do so. After she was gone 10 minutes, a line leader approached Site Manager James Cole and said the claimant was still in the restroom. Mr. Cole accompanied the line leader to the restroom and instructed the line leader to go in and ask the claimant what she was doing. The claimant then returned to the production line with the line leader. About three minutes after her return, she took a call on her cell phone, which is strictly prohibited due to camera features on cell phones and the proprietary nature of the employer's business. The line leader asked the claimant why she was on the phone and she stated her mother was caring for her newborn child and her child was ill so her mother called to determine whether they needed to go to the hospital. The line leader told the claimant she could leave the line to make arrangements for her child. Office Manager Scarlett Lynn contacted Mr. Cole to ask if the claimant was on a break, because she was participating in an unemployment hearing with the claimant on the phone at that time. The line leader returned to the restroom to ask the claimant what she was doing and the claimant stated she was on a very important call and the line leader would have

to hold on until she was done. At that point, Mr. Cole sent an assistant supervisor into the restroom to ask the claimant to come out and speak to the employer and client and the claimant said, "No," she was going to finish her phone call. When the assistant supervisor exited the restroom, she told Mr. Cole to send the claimant home pending a decision on her employment status in that assignment because she answered a cell phone call on the production line, abandoned her job by leaving the line without a valid reason, and insubordination in refusing a direct order of a supervisor to get off the phone. Ms. Lynn called the claimant later that afternoon and notified her that her assignment was terminated. If the claimant had simply told the employer and client she needed to take a phone call at a prearranged time for an unemployment hearing, she would have been allowed to do so.

The claimant has not received unemployment insurance benefits since her separation from this employer, as her claim is locked due to another decision.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

Iowa Code section 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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant took a cell phone call on the

production line in violation of the employer's strict policy prohibiting the use of cell phones and then was dishonest when asked why she had her phone on the floor and answered it while working. If the claimant had merely asked permission to participate in her unemployment hearing, the employer would have allowed her to take the phone call from Iowa Workforce Development and this situation could have been avoided altogether. If she had asked to participate in her unemployment hearing prior to the call and was denied permission, she could have quit with good cause attributable to the employer or have been allowed benefits if she was discharged for taking that call. Because the claimant was dishonest and violated the employer's policies by answering her cell phone on the floor without prior approval, was considered to have abandoned her job by leaving the line to go talk on the phone in the restroom, and acted in an insubordinate manner when confronted by the assistant supervisor, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

**DECISION:**

The July 18, 2012, reference 06, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw