

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMI L MARSH
Claimant

APPEAL NO. 09A-UI-17467-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FRED C MARSH MD PC
Employer

**Original Claim: 10/04/09
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 5, 2009 (reference 01) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on December 28, 2009. Claimant participated. Employer participated through Fred Marsh.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as an office manager from April 2008 and was separated from employment on October 8, 2009. They had been divorced in 2004, reconciled, lived together, and separated in June 2009, at which time employer suggested she find another job. In May 2009 she purchased garden items and a planter for their shared residence using the business credit card. She took the planter with her when they separated in June and hung the planter in plain sight from the balcony of her condo, which employer noticed. After the separation, she returned the credit card and made no purchases on it unless directed to do so for the office. At various times throughout the summer, employer told her she was “on thin ice” and asked how the job search was coming but did not specifically warn her that her job was in jeopardy for any particular job-related reason. She kept track of her PTO and the proposed policy she wrote was not returned or adopted for her salaried position. When the parties had a verbal confrontation including name-calling just outside the office, it was about personal issues and no employees or patients were present. Two months before the separation, the two had a dispute about the cell phone bill because of increased usage related to their interpersonal use about personal issues. A month before the separation, she went to purchase a new battery for her cell phone that was on the employer's plan. Since the phone was an old model and the store did not have a battery for it, she purchased a new phone on the account with the intention of reimbursing the employer when the rebate was finalized. This had not yet happened at the time of separation, so she returned the phone. The parties had various other non-work related personal and property disputes. The employer reviewed old credit card

receipts the weekend before the separation and confronted her about the planter but did not ask for its return or reimbursement. On the day of the separation, employer confronted claimant about personal e-mails he looked at while she was at lunch and brought up the planter issue.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The employer has not met the burden of proof to establish that claimant engaged in any misconduct other than poor judgment in using work e-mail for personal use and purchasing the phone on the account without handling the reimbursement immediately or notifying employer. Since employer had never specifically warned claimant about any work-related issues, it has not established that she acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an

employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are allowed.

DECISION:

The November 5, 2009 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw