

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LYNANE S JAVORINA**  
Claimant

**APPEAL NO. 12A-UI-05574-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ABCM CORPORATION**  
Employer

**OC: 04-15-12**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the May 1, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 5, 2012. The claimant did participate. The employer did participate through Tiffany Adams, human resources coordinator; Robin Smith, assistant director of nursing; and Bonnie Henry, director of nursing.

**ISSUE:**

Was the claimant discharged due to job 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 certified nursing assistant, full-time, beginning December 10, 2009, through April 16, 2012, when she was discharged. On April 12, the claimant was to be in the dining room with the residents as they ate. She left the dining room and was seen by one of the nurses using her cell phone while near the front door. The claimant did not have permission to leave the dining room, nor was there any emergency requiring she leave the dining room. While she was out of the dining room, one of the residents she was to be watching began choking and subsequently had to be taken to the hospital for additional medical treatment due to the choking incident. The claimant had prior discipline for leaving the facility without notification to anyone and without obtaining permission to leave. She had also been previously disciplined for failing to complete all of her job duties, including recording each of the resident's weights. The claimant was not to have her cell phone with her while she was working. The Administrative Law Judge is persuaded that the claimant was on her cell phone instead of attending to her duties, which resulted in an injury to a resident.

**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.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The employer expected the claimant to be in attendance in the dining room to prevent exactly the sort of injury that occurred because she was not there to assist the resident. The Administrative Law Judge is persuaded that the claimant was out of the dining room to use her cell phone in contravention of the employer's policy. The claimant did not need to leave the dining room to deal with a pizza delivery man. Her actions resulted in an injury to a resident requiring hospitalization and are sufficient misconduct to disqualify her from receipt of unemployment insurance benefits.

#### **DECISION:**

The May 1, 2012 (reference 01) decision is affirmed. 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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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw