IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

KIARRA S BRADFORD Claimant **CBE COMPANIES INC** Employer	**APPEAL 19A-UI-06666-S1-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 07/28/19** **Claimant: Respondent (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.3-7 – Overpayment

STATEMENT OF THE CASE:

CBE Companies (employer) appealed a representative's August 16, 2019 decision (reference 01) that concluded Kiarra Bradford (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 17, 2019. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Martin Dodge, Operations Manager; Andrea Baker, Operations Supervisor; and Mary Phillips, Chief Human Resources Officer.

The employer offered and Exhibit 1 was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 19, 2018, as a first party in Waterloo, Iowa. At the end of her employer as a full-time collector in Cedar Falls, Iowa. The claimant signed for receipt of the employer's online policies. In Waterloo, Iowa, her supervisors allowed the claimant to be a few minutes late returning from her breaks and make up the time later in the day. When she started in Cedar Falls, Iowa, she continued with the practice and did not know the employer was not allowing her that option. The claimant worked many hours and was not given credit for the time.

On March 19, 2019, the claimant's doctor provided a Medical Inquiry Form in Response to an Accommodation Request for urinary frequency. The employer was asked to allow the claimant to take frequent bathroom breaks.

On June 11, 2019, the employer issued the claimant a written warning for accumulating 6.25 points for taking long breaks/meals and 26.5 points for absences. The claimant's absences were due to medical issues and properly reported. On June 27, 2019, the employer issued the claimant a written warning for accumulating 11.75 points for taking long breaks/meals and 29.75 points for absences. Both warnings stated that any further instances would result in termination. The claimant pointed out that the clock in the office and in her car were not the same and that could account for the problem. The claimant was unaware of a policy that stated that, "Any employee that receives three (3) written warnings within a six (6) month period will be immediately terminated."

On June 27, 2019, the employer issued the claimant a verbal coaching for work avoidance when she got a cup of coffee. On July 2, 2019, the employer issued her a second verbal coaching for work avoidance after getting permission to make a call about a garnishment and making a call.

On July 30, 2019, the claimant took a medical accommodation restroom break from 8:39 to 8:48 a.m. The employer thought the claimant should have waited until 8:51 a.m. to take her regular break. In addition, she took another medical accommodation break from 9:36 a.m. to 10:07 a.m. She used two minutes of the break to listen to a voice mail. She worked until approximately 3:30 p.m. without incident. The employer terminated her for work avoidance and receiving three warnings in six months.

The claimant filed for unemployment insurance benefits with an effective date of July 28, 2019. The employer participated personally at the fact finding interview on August 15, 2019, by Martin Dodge, Andrea Baker, and Mary Phillips.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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 disqualification shall continue 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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The two-minute listening to voice mail during a medically necessary break does not rise to the level of misconduct. It was not wise but it is not misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's August 16, 2019, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs