

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRITTANY M SHEELER**  
Claimant

**APPEAL NO. 14A-UI-03072-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MOSAIC**  
Employer

**OC: 02/02/14**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Brittany Sheeler filed a timely appeal from the March 10, 2014, reference 01, decision that disqualified her for benefits. After due notice was issued, a hearing was held on April 11, 2014. Ms. Sheeler participated. Tom Kuiper of Equifax Workforce Solutions represented the employer. Exhibits One through Four were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Brittany Sheeler was employed by Mosaic as a full-time direct support associate from March 2013 until February 3, 2014, when the employer discharged her from the employment.

The events that triggered the discharge occurred on January 30, 2014. On that day, Ms. Sheeler was in possession of her cell phone at a time when she was working with disabled clients in a day treatment/workshop environment. Ms. Sheeler is an insulin-dependent diabetic and wears an insulin pump. A week earlier, Ms. Sheeler had suffered a diabetes-related seizure in the workplace. On January 30, 2014, Ms. Sheeler was waiting for a call from her doctor concerning an adjustment to the insulin pump. Ms. Sheeler needed to be available to speak with the doctor when the doctor called. The doctor was going to walk Ms. Sheeler through the instructions to make the adjustment to the insulin pump to adjust the flow of insulin into her body. The employer had a policy that prohibited cell phone use at times when employees were supposed to be directing their attention to their work duties. Ms. Sheeler had previously obtained permission from her immediate supervisor so that she could have her cell phone in her possession during work hours for medical-related purposes. Ms. Sheeler had not sought such permission on January 30, 2014. Ms. Sheeler had used her cell phone during a break on January 30, 2014, to update her Facebook status to indicate that she was unhappy in her employment and was ready to move on. Ms. Sheeler had not mentioned Mosaic in the posting.

During the shift on January 30, Jill Bohnet, Habilitative Coordinator, was supervising the area where Ms. Sheeler was performing her duties. Ms. Bohnet confiscated Ms. Sheeler's phone and a phone belonging to another employee. Ms. Sheeler's phone had been sitting on a table, with the ringer turned off. Ms. Sheeler had the phone out so that she could see it light up as it indicated an incoming call. The other employee was talking on her cell phone when Ms. Bohnet confiscated the cell phones. Ms. Bohnet took the cell phones back to her desk. During the course of the shift, Ms. Sheeler asked for her cell phone back, but Ms. Bohnet indicated she could have it at the end of her shift. Ms. Sheeler told Ms. Bohnet that she was expecting a call from her doctor. Ms. Bohnet indicated that she would let Ms. Sheeler know if there was a call. Toward the end of the shift, Ms. Sheeler needed to assist in transporting the clients in her care back to their home. Before she left Ms. Sheeler reminded Ms. Bohnet that she had an appointment she needed to get to after she was done with work. Ms. Sheeler again asked Ms. Bohnet for her cell phone and Ms. Bohnet reiterated that she could retrieve it at the end of her shift.

After Ms. Sheeler helped to transport the residents home, she returned to the facility that Ms. Bohnet was supervising to retrieve her cell phone. Ms. Bohnet indicated that Ms. Sheeler's phone had gone off a number of times during the shift and that Ms. Bohnet had answered the calls. Ms. Sheeler viewed this as an invasion of her privacy and expressed her displeasure. During this conversation, Ms. Bohnet and another supervisor engaged Ms. Sheeler in a conversation relating to Ms. Sheeler's Facebook posting earlier in the day. The other supervisor told Ms. Sheeler repeatedly that if she was unhappy she should leave. When Ms. Bohnet ultimately relinquished Ms. Sheeler's phone, Ms. Sheeler left and slammed a door behind her.

Ms. Sheeler was next scheduled to work on February 3, 2014. On that day, Ms. Bohnet discharged Ms. Sheeler from the employment. Ms. Bohnet cited violations of the employer's social media policy and cell phone policy as the basis for the discharge. The social media policy prohibited employees from using work time to access social media for personal reasons.

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

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 proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment 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. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The evidence in the record establishes that Ms. Sheeler violated the employer's cell phone policy on January 30, 2014, but that she had a good cause, medically-based reason for doing so. The evidence fails to establish that Ms. Sheeler violated the employer's social media policy. Ms. Sheeler had updated her Facebook status while on break, not at a time when she was working with clients. The weight of the evidence indicates that the policy violations were pretext for a discharge that was actually based on Ms. Sheeler's expression of unhappiness with the employment. The employer escalated the matter on January 30, 2014 by taking unnecessary heavy-handed and provocative approach to dealing with Ms. Sheeler that day. The employer engaged in inappropriate conduct by answering Ms. Sheeler's personal cell phone that day and Ms. Sheeler was understandably upset by that conduct and by the employer's otherwise heavy-handed approach. Ms. Sheeler's conduct on January 30, 2014 did not rise to the level of misconduct in connection with the employment that would disqualify her for unemployment insurance benefits.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Sheeler was discharged for no disqualifying reason. Accordingly, Ms. Sheeler is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The claims deputy's March 10, 2014, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs