

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WILLIE B STRONG

Claimant

APPEAL 21A-UI-01022-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEEMS INDUSTRIES INC

Employer

OC: 11/24/19

Claimant: Appellant (1)

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

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 24, 2020, (reference 04) unemployment insurance decision that denied benefits based upon a finding that claimant was discharged for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on February 15, 2020. The claimant Willie B. Strong participated and testified. The employer Weems Industries, Inc. participated through human resource supervisor Jordan Jackson.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a coil line lead from March 24, 2020, until this employment ended on August 25, 2020, when he discharged.

Employer maintains a cell phone use policy which prohibits cell phone use except in the break room or on the patio. The policy is found in employer's handbook.

Claimant was told by a supervisor at the time of hire that cell phones could be used on the floor as long as the employee was not on the line. Approximately two months later, claimant's supervisor noticed an employee on the floor using his cell phone and informed claimant that as the line lead he was responsible for enforcing the cell phone policy. At that time claimant learned that cell phone use was not allowed anywhere on the floor.

On August 6, 2020, employer gave claimant a written warning for violating its cell phone use policy for taking calls and sending text messages on the floor. Claimant refused to sign the policy because he did not believe he had intentionally violated the policy.

The final incident which led to claimant's discharge occurred on August 25, 2020. Claimant continued to violate the cell phone policy by taking calls and sending text messages while on the floor and employer terminated his employment on that date.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

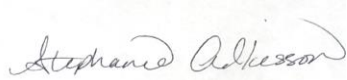
The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531

N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. While there may have initially been a miscommunication regarding the cell phone use policy, it was clearly stated in the employee handbook. Further, claimant learned shortly after the start of his employment that he was mistaken on the policy when his supervisor pointed it out to him. Finally, claimant received a written warning on August 6, 2020, for using his cell phone on the floor. Employer has presented substantial and credible evidence that claimant was warned that cell phone use on the floor was a violation of its policy and could lead to termination. Despite the warnings, claimant continued to engage in similar behavior. This is disqualifying misconduct.

DECISION:

The November 24, 2020, (reference 04) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Stephanie Adkisson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

February 26, 2021
Decision Dated and Mailed

sa/lj

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.