

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY B HOWARD
Claimant

APPEAL NO. 12A-UI-03331-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHENKER LOGISTICS INC
Employer

OC: 02/26/12
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 2, 2012 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on April 18, 2012. Claimant participated. Employer participated through human resources manager, Nicki Brick. Employer's Exhibit 1 was admitted to the record.

ISSUE:

Did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a fork lift operator from August 2011, after a training period with a temporary staffing agency, and was separated from employment on February 20, 2012. Her last day of work was February 15, 2012 and she had an e-reader with her while operating the fork lift on the warehouse floor. Electronic devices are prohibited on the floor, whether they are being used or not, because of safety concerns. The team leader, Clint Rupert, approached her earlier in the shift and told her to put it away. Later in the same shift he saw her with the device again. Third shift supervisor Gary Wilson spoke with her later and she admitted listening to the device while driving. She admitted to Bricks that she knew it was a violation to have the device on her. The company provides lockers for employees' personal belongings and claimant declined one.

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 § 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).

Claimant's use or possession of the e-reader having been warned earlier in the day to put it away and not have it on the production floor is evidence of deliberate disqualifying job-related misconduct. Benefits are denied.

DECISION:

The April 2, 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css