

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANA R CLARK
Claimant

APPEAL NO. 08A-UI-07029-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JONES COUNTY
Employer

OC: 07/06/08 R: 04
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Dana R. Clark (employer) appealed a representative's July 30, 2008 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Jones County (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on August 18, 2008. The claimant participated in the hearing. Lisa Tallman appeared on the employer's behalf and presented testimony from one other witness, Phyllis Dirks. During the hearing, Claimant's Exhibits A and B were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 16, 2007. She worked full time as kitchen supervisor of the employer's senior dining program. Her last day of work was July 3, 2008. The employer discharged her on July 7, 2008. The stated reason for the discharge was repeated usage of her cell phone in the workplace after prior warning.

The employer had discovered significant problems related to the claimant's usage of her cell phone while at work, resulting in a special policy being adopted as of February 15, 2008, which specifically stated there was to be no cell phone usage during business hours; the claimant was informed of that policy. However, there were still some problems, resulting in a written warning signed by the claimant on February 29. After an additional violation, on April 17 the claimant received a verbal warning from Ms. Tallman, the program director. Even though the employer's policy did not specifically go so far as to ban cell phones from the premises and in general Ms. Tallman did not object to the usage of cell phones by employees if the employees were on break, in the discussion on April 17 the claimant asserted that to avoid further violations, she would leave her phone in her vehicle and not even bring it into the workplace.

Ms. Tallman was out of the office the week of June 30 through July 3. When she returned on July 7 she learned from Ms. Dirks, the assistant cook, that there had been a number of occasions the prior week where the claimant had ducked into a pantry or other area in the workplace and used her cell phone. Upon learning this, after the prior warnings and the assurance by the claimant that she would not even carry her cell phone into the workplace, Ms. Tallman determined to discharge the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

While the policy itself may not have required the claimant to keep her cell phone out of the workplace, she had placed herself under that restriction. As such, when the claimant did use her cell phone in the workplace during the week ending July 3, the employer was reasonable in concluding that it was in violation of the employer's policy, and not on a "break time" as asserted at the hearing by the claimant. The claimant's usage of her cell phone in the workplace after the prior warnings shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's July 30, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of July 7, 2008. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw