

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CARRIE M MASTELLER**  
Claimant

**CBE COMPANIES INC**  
Employer

**APPEAL 19A-UI-08075-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/21/19**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the October 11, 2019 (reference 03) unemployment insurance decision that found the claimant was denied benefits based upon her discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on November 4, 2019. The claimant, Carrie M. Masteller, participated personally. The employer, CBE Companies Inc., participated through witnesses Kristen Rowles and Jay Sandy. Mary Phillips observed on behalf of the employer. Employer's Exhibits 1 and 2 were admitted.

**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 collector for the employer's debt collection firm. She began her employment on May 6, 2019 and her employment ended on September 23, 2019. Claimant was discharged from employment. Claimant's direct supervisor at the time of discharge was Jay Sandy.

Part of the claimant's job duties included passing a test called "You call me" which involved the claimant calling a trainer to pretend they were working on a real collections call. It was necessary for the claimant to have knowledge of authentication procedures when making collection calls so that the employer would not be subject to legal liability or FDCPA claims.

Claimant attended training for two weeks prior to the final test. During the training claimant was on her cell phone and not paying attention to the instructor. Claimant failed the first test on Friday, September 20, 2019 due to incorrectly authenticating the taxpayer's middle initial and the secondary name on the account. Claimant was given the opportunity to take further training courses and refused to do so. Claimant took the second test on Monday, September 23, 2019 and failed the second test for incorrectly authenticating the taxpayer's middle initial on the call. Because the claimant had failed two tests, she was discharged from employment pursuant to

the employer's written policy. See Exhibit 2. Claimant was aware that failure of the tests could result in discharge when she received the employer's written policy. See Exhibit 2.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged for job-related misconduct. Benefits are denied.

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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.

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. Iowa Code § 96.6(2); *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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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 Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer’s interests. *Henry v. Iowa Dep’t of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

An employer has the right to expect an employee to follow reasonable directions. *Myers v. Iowa Dep’t of Job Serv.*, 373 N.W.2d 507 (Iowa Ct. App. 1985). Continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). An instruction is reasonable if it presents no hardship to the employee and no threat to his or her health, safety, or morals. *Endicott v. Iowa Dep’t of Job Services*, 367 N.W.2d 300, 304 (Iowa App. 1985).

In this case, claimant was deliberately on her cell phone during training and not paying attention. Because she failed to pay attention at training, she was unable to pass the authentication portion of the test, on two separate occasions. Claimant intentionally refused to attend additional trainings to increase her knowledge for the test. She then failed the test a second time, for the exact same reason as the first (failure to authenticate the taxpayer’s name). This recurrent carelessness and negligence establishes an intentional and substantial disregard of the employer’s interests and obligations the claimant owed to the employer. This was substantial because the employer could be subject to litigation if the claimant failed to properly authenticate the taxpayer they were speaking with. Claimant understood that passage of the test was required as part of her job duties. Accordingly, the employer has proven claimant committed a current act of job-related misconduct. As such, benefits are denied.

#### **DECISION:**

The October 11, 2019 (reference 03) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times her weekly benefit amount after her separation date, and provided she is otherwise eligible.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/scn