

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARAH R RIVAS
Claimant

APPEAL NO. 10A-UI-05333-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE CBE GROUP INC
Employer

OC: 02/28/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Sarah R. Rivas filed a timely appeal from an unemployment insurance decision dated March 31, 2010, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held May 27, 2010 with Ms. Rivas participating. Collection Manager Dave Muell, Director Cindy Gade and Senior Vice President for Human Resources Mary Phillips participated for the employer, The CBE Group, Inc. Employer Exhibit One and Claimant Exhibit A were admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Sarah R. Rivas was employed as a collector by The CBE Group, Inc. from November 16, 2009 until she was discharged March 3, 2010. The final incident leading to discharge also occurred on March 3, 2010. Company policy prohibits employees from having their cell phones turned on while on the collection floor, including the adjacent restrooms. Collection Manager Dave Muell observed Ms. Rivas returning from the restroom with her cell phone in hand. She put the cell phone into her desk drawer. Mr. Muell approached Ms. Rivas and asked to see her cell phone. As she retrieved it, she turned it off. Ms. Rivas had been warned previously about cell phone usage while on duty, most recently on February 10, 2010.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does.

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.

Mr. Muell spoke from personal observation, not from information presented to him by another party. He testified seeing the cell phone in Ms. Rivas' hands and observing that it was powered on. The testimony was plausible. The claimant's explanation that the power button does not work properly was not corroborated in any fashion. The claimant's documentary evidence that showed no incoming or outgoing phone calls on the day in question did not address the issue of whether the phone was powered on. The administrative law judge finds the employer's evidence concerning the final incident to be the more credible. The evidence in the record establishes a final incident involving a violation of company policy with two prior warnings for the same issue, one occurring within a month of discharge. This evidence is sufficient to establish misconduct. Benefits must be withheld.

DECISION:

The unemployment insurance decision dated March 31, 2010, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs