

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

AMBER L FLORES
Claimant

CRYSTAL CLEAN
Employer

APPEAL NO. 14A-UI-07910-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/08/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 30, 2014, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on August 25, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Crystal Cook participated in the hearing on behalf of the employer. Exhibits One through Four were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a house cleaner and office worker from March 2009 to June 13, 2014. She was informed and understood that under the employer's work rules, there was to be no smoking in company vehicles. This rule had been emphasized after employees had complained about employees smoking in the vans. Crystal Cook is the owner of the business.

The claimant violated the employer's policy by smoking in the van. She thought it was justified because a coworker told her that Cook had said it was okay to smoke in the van. Cook had during the winter told this coworker on a one-time basis that she could smoke with the van doors open. The claimant never contacted Cook to verify the coworker's story. The claimant was aware that others employees also smoked in the van.

Cook also believed the claimant was texting other employees excessively and was displaying a negative attitude at work. The claimant's texting was regarding work-related manners. The claimant sometimes was in bad mood because of things that happened at work but never deliberately sought to disrupt work with negative comment or attitude.

On around June 13, 2014 the claimant was smoking in the van. The cleaner of the van brought in pop cans with ashes and cigarette butts and showed Cook. Cook then discharged the claimant for violating the policy by smoking in the van, having a negative attitude, and texting employees excessively.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's violation of a known work rule about smoking in the van was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. The claimant was obligated to speak with Cook when she learned about coworker's conversation with Cook to verify what she had said. The evidence does not show Cook condoned smoking in the van. Work-connected misconduct as defined by the unemployment insurance law has been established in this case based on the violation of the smoking policy. I concluded that a current act of work-connected misconduct has been proven based on the claimant having a negative attitude or texting excessively.

DECISION:

The unemployment insurance decision dated July 30, 2014, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/can