

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADRIANE M DAVIS
Claimant

APPEAL NO. 10A-UI-02123-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**INTERACTIVE TELESERVICES CORP
INFLUENT**
Employer

**Original Claim: 01/10/10
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Adriane Davis, filed an appeal from a decision dated February 1, 2010, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on March 22, 2010. The claimant participated on her own behalf. The employer, Influent, participated by Human Resources Manager Meadow Popejoy. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Adriane Davis was employed by Influent from April 28, 2009 until December 16, 2009 as a part-time TSR. She received a first and final warning for insubordination on October 14, 2009, for refusing to put away her personal cell phone on the calling floor. She signed the warning, which stated any further incidents could lead to discharge.

On December 16, 2009, Ms. Davis asked a supervisor, Sarah Fischer, to hand her a phone book and the supervisor refused, saying she did not want to get into trouble. The claimant became upset and raised her voice and said she could talk to Ms. Fischer “however the hell [she] wanted to.” She was later heard to say “I will talk to that dirty bitch anyway I want.” She was discharged by a corporate representative later that day for insubordination, offensive language on the calling floor, and discourtesy to a co-worker.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant had been advised her job was in jeopardy as a result of her insubordination and poor attitude. In spite of the warning she became verbally abusive and offensive to a co-worker and used foul language on the calling floor. This is a violation of the duties and responsibilities the employer has the right to expect of an employee. The employer has the obligation to provide a safe and harassment-free work environment for all employees, and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of February 1, 2010, reference 01, is affirmed. Adriane Davis is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw