

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CECELIA YARKPAWOLO
Claimant

APPEAL NO. 11A-UI-09863-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROADLAWNS MEDICAL CENTER
Employer

**OC: 06/19/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Cecelia Yarkpawolo filed a timely appeal from an unemployment insurance decision dated July 15, 2011, reference 01, that disqualified her for benefits. After due notice was issued, a hearing was held in Des Moines, Iowa on August 30, 2011. The claimant did not respond when paged at the time of the hearing and did not contact the administrative law judge while the hearing was in progress. Human Resources Director Julie Kilgore and Environmental Services Director Brian Croxton participated for the employer, Broadlawns Medical Center. Employer Exhibit One was admitted into evidence.

ISSUE:

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

FINDINGS OF FACT:

Cecelia Yarkpawolo was employed as an environmental services technician by Broadlawns Medical Center from March 1, 2010 until she was discharged June 22, 2011. The final incident leading to discharge had occurred on the evening of June 21, 2011. Approximately 15 minutes into her shift, Ms. Yarkpawolo was observed by the second shift lead technician talking on her cell phone in the employee's locker room. This was a violation of a policy that prohibits the use of personal cell phones while on duty. Ms. Yarkpawolo had received warnings for this offense on August 3, December 8 and December 13, 2010. It had been noted in her employee performance review on May 27, 2011. Ms. Yarkpawolo did not offer an explanation for her actions on June 21, 2011.

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 § 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 employer provided sworn testimony and documentary evidence that establishes a pattern of violation of a known company rule. The administrative law judge concludes that this evidence is sufficient to establish misconduct. Benefits are withheld.

DECISION:

The unemployment insurance decision dated July 15, 2011, 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