

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANDREW J STRUB**  
Claimant

**APPEAL NO. 09A-UI-15220-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MI-T-M CORPORATION**  
Employer

**OC: 09/13/09**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Andrew Strub, filed an appeal from a decision dated October 1, 2009, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on November 10, 2009. The claimant participated on his own behalf. The employer, MI-T-M, participated by Human Resources Manager Susan Haxmeier and Shipping Supervisor Charles Kluesner. Exhibits One, Two, Three, and A, were 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:**

Andrew Strub was employed by Mi-T-M from January 12, 2005 until September 15, 2009 as a full-time shipping laborer. He received a copy of the employee handbook which prohibited the use of phones for personal business except during authorized breaks. Mr. Strub was given a verbal warning by Supervisor Charles Kluesner on July 6, 2009, for using his personal cell phone during work hours.

On July 20, 2009, he was given a written warning for not only using his cell phone during work hours but also using it to post text messages on his personal Facebook website, using obscene language and making inappropriate comments about the company, supervisors and co-workers. That warning was followed up verbally by Mr. Kluesner who told him he must either leave his phone/blackberry in his vehicle or give it to the supervisor during non-break times. He did not do this.

On September 14, 2009, Mr. Kluesner looked for Mr. Strub for about 20 minutes and finally found him sitting on his fork truck, talking on his personal cell phone. The supervisor reported the incident to the department manager who then consulted with Human Resources Manager Susan Haxmeier. They reviewed Mr. Strub's personnel file and the prior warnings. The employer considered this to be a serious enough violation to exercise its prerogative to skip

over the next disciplinary step of suspension and discharge the claimant. He was notified on September 15, 2009, by Ms. Haxmeier he was being fired.

**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 received a copy of the employee handbook which prohibited the use of phones for personal use during business hours, except on authorized breaks. In spite of that policy he was texting obscene comments on web site from his blackberry during work hours. He was given a warning about this and reminded of the policy against personal calls during work hours. In spite of the warning he was again sitting unproductively on his fork truck, rather than driving it, and using his personal cell phone during work hours. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

**DECISION:**

The representative's decision of October 1, 2009, reference 01, is affirmed. Andrew Strub is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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