

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES T MCKENNA**  
Claimant

**APPEAL NO: 15A-UI-04890-LDT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HACH CO INC**  
Employer

**OC: 04/05/15**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

James T. McKenna (claimant) appealed a representative's April 20, 2015 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Hach Company, Inc. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on June 2, 2015. The claimant participated in the hearing. Steven Zaks, Barnett Associates representative, appeared on the employer's behalf and presented testimony from one witness, Duane Reitz. One other witness, Brian Cool, was available on behalf of the employer but did not testify. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Affirmed. Benefits denied.

**FINDINGS OF FACT:**

The claimant started working for the employer on February 3, 2014. He worked full time as a material handler at the employer's Ames, Iowa chemical manufacturing and distribution business. His last day of work was April 7, 2015. The employer discharged him on that date. The stated reason for the discharge was using a cell phone while operating equipment.

The employer's policies prohibit employees from using phones while working. The claimant had received a written warning on November 4, 2014 for violating this policy. On April 3 the claimant was operating a tugger and was approaching Reitz, a human resources generalist, who was walking in the warehouse. The claimant had his cell phone out and had it in front of his face looking at it; he did not see Reitz until Reitz stepped aside and called out to him to stop when the claimant was about ten feet away from them. While the claimant may have only been using his phone to check the time, because this was the second time the claimant had been using his phone while working and because of the danger to safety caused by using it while operating the equipment, the employer discharged the claimant.

## REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's using the claimant's cell phone while operating the equipment on April 3 after receiving the prior warning for using the phone while working shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

## DECISION:

The representative's April 20, 2015 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of April 7, 2015. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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