

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LATOYA R VEASLEY
Claimant

APPEAL NO. 12A-UI-05011-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 04/08/12
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Latoya Veasley, filed an appeal from a decision dated May 1, 2012, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on May 21, 2012. The claimant participated on her own behalf and with Amelia Williams. The employer, Express Services, participated by Staffing Consultant Jim Cole.

ISSUE:

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

FINDINGS OF FACT:

Latoya Veasley was employed by Express Services from June 21, 2011 until April 5, 2012 at client company Airgas North Central. It was a long-term assignment.

On April 5, 2012, the claimant left for lunch and did not return. She had called her staffing consultant Nicole Cook to report she was not getting along with her supervisor. The call was made around 1:50 p.m. when Ms. Veasley should have returned from lunch at 1:00 p.m. The claimant was sitting in a car in the parking lot at the time.

Ms. Cook said she would investigate and she did so by talking to the supervisor, Mindy. This supervisor reported the claimant was found talking on her cell phone that day and had been reprimanded because the supervisor had warned her about using her cell phone the previous two days. Ms. Veasley maintained there was no rule against having a personal cell phone with you during work hours. This is true but for the limited purpose of listening to music, not making phone calls. The claimant stated it was an emergency call to her mother because she needed someone to go to her home and turn off the oven, which she had left on. Ms. Veasley did not explain why she simply did not go to her supervisor, explain the situation and ask for permission to make the emergency call. She even admitted the supervisor had found her using the cell phone and exclaimed, "not today!"

Ms. Cook called the claimant back and accused her of not telling the entire truth. Her talk with the supervisor had revealed prior warnings about not using a personal cell phone for calls during the workday. The employer notified the claimant the assignment was over and she would not be offered any other assignments in the future.

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 was effectively discharged by being removed from her assignment and notified the employer would not offer her any other assignments in the future. She claimed harassment by her supervisor who was only reprimanding her for violating company rules when she used her personal cell phone for personal business while on the clock. In addition, she did not return to work after her lunch period and was more than one hour late by the time she was released by Ms. Cook.

Whatever her problems may have been she did the correct thing by calling her Express Services supervisor to deal with it. But she did not give Ms. Cook the complete story and had not excuse for not returning to work and waiting to hear from her supervisor. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of May 1, 2012, reference 01, is affirmed. Latoya Veasley is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css