

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROCIO V PEREZ
Claimant

APPEAL NO. 11A-UI-01370-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

G M R I INC
Employer

OC: 10/31/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated January 16, 2011, reference 02, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on April 11, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Joseph Basque. No one participated in the hearing on behalf of the employer. This is duplicate decision to the one issued in 11A-UI-01369-SWT, which appears to be due to wages being reported under two location account numbers for this employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as an alley coordinator in the employer's Red Lobster restaurant from August 2009 to October 16, 2010.

The claimant had punched out after completing her work shift on October 16, 2010. She discovered that she had several missed calls on her cell phone from her father-in-law who had been suffering from a serious illness. She was on her phone trying to reach her father-in-law and crossed the kitchen to get her jacket. The manager on duty saw her on her cell phone in the kitchen and mistakenly believed that she was talking on her cell phone while she was on duty. The manager asked what she was doing on her cell phone. The claimant hung up her phone and went to the restroom for privacy. The manager followed her into the restroom and asked her if she cared about her job. The claimant told the manager that she did not think it was right that the manager follow her into the restroom. The manager told the claimant to leave and not come back.

The claimant was discharged by the manager on October 16, 2010, for using her cell phone and her response to the manager's questioning.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

No willful and substantial misconduct has been proven in this case. The employer mistakenly believed the claimant was using her cell phone while on duty. Her response to the questioning in the restroom amount to at most unsatisfactory conduct, not disqualifying misconduct.

DECISION:

The unemployment insurance decision dated January 16, 2011, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css