

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TENNAPHONE S SYLAVONG
Claimant

WEST LIBERTY FOODS LLC
Employer

APPEAL 17A-UI-06917-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/11/17
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 6, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 24, 2017. Claimant participated. Employer participated through human resources supervisor Monica Dyar. Employer Exhibit 1 was admitted into evidence with no objection.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a boxing utility from January 19, 2015, and was separated from employment on May 30, 2017, when she was discharged.

The employer has a policy that “[i]mproper use of cell phone and/or camera enabled cell phones, including using cell phones, cameras and recording devices in unauthorized areas without proper consent of management” is a major rule violation. Employer Exhibit 1. The policy provides that violations of major rules “may result in termination of employment without warning.” Employer Exhibit 1. The cafeteria is the only area where claimant was authorized to use cellphone and/or camera. Claimant was aware of the policy. Employer Exhibit 1.

During a tornado warning in May 2017, claimant took a picture with her phone of a picture of team member (Nate) that was under an employee’s (Mindy) desk in the human resources department. Claimant took the picture on a Wednesday in May 2017, during a tornado warning (employer had two tornado warnings in May and both were on a Wednesday). After claimant took the picture, she posted the picture on Facebook.

On May 22, 2017, an employee reported to the employer that claimant had posted the picture on Facebook. On May 23, 2017, the human resources manager interviewed claimant regarding the picture. Employer Exhibit 1. Claimant provided the employer with a written statement. Claimant admitted to taking the picture during the tornado warning. Employer Exhibit 1. Claimant did not see anything wrong with taking the picture of the picture. Employer Exhibit 1.

The human resources manager explained that the picture was of someone's work area and could have contained confidential information. Employer Exhibit 1. Claimant did not tell Mindy that she took the picture. Employer Exhibit 1. Claimant was informed the employer was conducting an investigation and she was allowed to continue working.

Because of claimant's pattern of disregard for failure to follow the employer's policies and that she was in a leadership role, the employer made the decision to separate. On May 30, 2017, the human resources manager told claimant that she was discharged. Employer Exhibit 1. Claimant was discharged after committing a major rule violation when she took the picture in the human resources department.

Claimant had multiple disciplinary warnings prior to discharge. On May 19, 2017, the employer gave claimant a written warning for unapproved hand lotion in her box in the boxing hallway. Employer Exhibit 1. The employer is regulated by the USDA. Pursuant to the USDA's regulations and the employer's regulations, employees are not allowed to have personal belongings, including lotions, on the production floor as a measure of quality control and food safety. Employer Exhibit 1. Claimant was aware of these regulations. Claimant was warned that her job was in jeopardy. On March 24, 2017, the employer gave claimant a written warning for failing to consistently wear safety glasses on the production floor, a major rule violation. Employer Exhibit 1. The employer has a written policy requiring employees to wear safety glasses on the production floor. On October 31, 2016, the employer gave claimant a written warning for failing to scan product to a work order before using product. Employer Exhibit 1. On September 16, 2016, the employer gave claimant a written warning for riding on the forks of powered industrial truck while it was being driven by a team member. Employer Exhibit 1. On August 30, 2016, the employer gave claimant a written warning for failing to ensure product was scanned to a work order before it was being used.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer's policy prohibiting employees from using cell phones in unauthorized areas is reasonable in order to protect confidential information. The employer has presented substantial and credible evidence that claimant took a picture with her cell phone in an unauthorized area without permission from management in violation of a known major rule. Although the picture claimant took did not include any confidential information, she still was not authorized to use her cell phone in the human resources department and there was potential for the picture to include confidential information. Furthermore, it is also noted that claimant had been previously warned for violating a major rule.

Claimant's conduct was contrary to the best interests of the employer, in violation of a known major rule, and is disqualifying misconduct. Benefits are denied.

DECISION:

The July 6, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs