

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CRYSTAL ARRINGTON
Claimant

APAC CUSTOMER SVCS INC
Employer

APPEAL 14A-UI-06483-LT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/11/14
Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the June 13, 2014, (reference 01) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on July 16, 2014. Claimant did not respond to the hearing notice instruction and did not participate. Employer participated through human resources generalist Turkessa Newsone and Nicole McLean.

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 customer service representative and was separated from employment on May 13, 2014. The policy prohibits electronic devices on the calling floor to protect contract customers and potential customer private information. While on the call floor, claimant's cell phone fell out from the pocket of her jacket on May 12. Claimant admitted the conduct, saying she had it because it took her extra time to get her phone from her locker during breaks and she had been running over on her breaks. She had been warned in writing on January 29, 2014, about having her phone on the call floor with the same excuse. McLean's desk phone and two others are available for incoming or outgoing phone calls.

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.

Iowa Code § 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.

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).

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). 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 has presented substantial and credible evidence that claimant brought her cell phone onto the call floor after having been warned. The repetitive nature of the behavior and her attempt to conceal the phone is evidence of deliberate conduct in violation of company policy, procedure, or prior warning. The employer's request was not unduly burdensome or unreasonable. Benefits are denied.

DECISION:

The June 13, 2014, (reference 01) decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

REMAND: The overpayment and fact-finding participation issues pursuant to Iowa Code § 96.3(7) and Iowa Admin. Code r. 871-24.10 respectively, although clearly set out on the hearing notice, are remanded to the Benefits Bureau of Iowa Workforce Development for an

initial investigation and determination because claimant did not participate in this hearing that addressed the separation from employment.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css