

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORAH S HERRON
Claimant

APPEAL NO. 10A-UI-17900-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JENSEN'S BRIDGEWAY
Employer

OC: 10/10/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Deborah S. Herron (claimant) appealed a representative's December 20, 2010 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Jensen's Bridgeway (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on February 23, 2011. The claimant participated in the hearing. Cindy Jensen appeared on the employer's behalf. 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?

FINDINGS OF FACT:

The claimant started working for the employer on or about July 13, 2008. She worked full-time as a clerk at the employer's convenience store. Her last day of work was October 9, 2010. The employer discharged her on October 10, 2010. The stated reason for the discharge was cell phone usage in the store after prior warning.

The claimant had been given about three warnings, most recently on September 13, 2010, that she was not to use her cell phone while there were customers in the store. The employer advised her on September 13 that since she continued to have problems complying with the employer's directive, that she should just leave her cell phone in her car.

On October 9 the claimant was on her cell phone in the store while there were customers in the store, talking for about ten minutes. The call was from the foster family caring for the claimant's baby daughter; they were concerned that the child was cranky and vomiting due to teething. The claimant could have arranged for the family to be able to call her on the store's number, or she could have arranged to return the call to the family after her customers had left.

Because of this additional incident after prior warnings, 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 that was a material breach of the duties and obligations owed by the employee to the employer. 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 that 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. 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. 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 repeated use of her cell phone in the store while there were customers present, after prior warnings, including an advisory that she not even bring her cell phone into the store, 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 December 20, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of October 10, 2010. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw