

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LEROM S COOPER
Claimant

JOSEPH L ERTL INC
Employer

APPEAL 16A-UI-13254-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/20/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 9, 2016, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on January 5, 2017. The claimant participated personally. The employer participated through Robert Burris, human resources liaison. Claimant exhibit A and Employer Exhibits 1 through 4 were admitted into evidence. Based on the evidence, the arguments presented, 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 disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a metal material handler and was separated from employment on November 17, 2016, when he was discharged for violating the employer's cell phone policy (Employer Exhibits 2 and 3)

The employer has a cell phone policy which prohibits employees carrying their cell phones on their person while on the production floor (Employer Exhibit 1). The claimant was made aware of the employer policies upon hire and refreshed throughout employment (Employer Exhibit 4). The employer considers the phone policy to be a safety policy, inasmuch the employer handles certain molten metals, and exposure with a cell phone battery could result in an explosion on the premises, causing physical harm to employees and physical damage to the premises. In addition, given the safety-sensitive nature of the production floor, the employer does not want employees distracted by cell phones. Consequently, phones are expected to be stored in lockers or cars, used in the break room only, and the employer does not apply progressive discipline for infractions.

The claimant stated that on November 16, 2016, he stored his phone in his lunch pail. Upon completion of his shift, he retrieved his cell phone and put it in his coat pocket. He changed out

of his work boots, and went outside to wait for his ride. The claimant then realized he had left his cigarettes and keys on the production floor, and according to him, he went back to the locker room, retrieved his boots, so he could walk back into the production area and retrieve his personal items. The claimant did not leave his cell phone in the break room, but rather continued to carry it through the production floor to retrieve his items. During this time, he dropped his cell phone on the work floor. The employer reported there was scrap metal near the area the cell phone was found, which is routinely hauled, and had the claimant's phone been picked up in error, which is then hauled into molten metal furnaces, it could have caused a catastrophic explosion, large enough in Mr. Burris' words, "to blow the roof off."

The employer had attempted to plug the phone in to identify its user but it did not hold a charge. The claimant stated he had previously taken his phone into the maintenance shop to see if they could help charge the phone. The employer stated these actions also violated the employer's cell phone policy. Upon the claimant inquiring about a lost phone when he returned the next day, the employer returned the phone, and interviewed the claimant. He was subsequently discharged for carrying his cell phone (and dropping it) on the production floor, in violation of policy.

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).

"This is the meaning which has been given the term in other jurisdictions under similar statutes, and we believe it accurately reflects the intent of the legislature." *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d, 445, 448 (Iowa 1979).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

An employer has a responsibility to protect the safety of its employees, from potentially unsafe, or dangerous conditions in the workplace. The employer has a strict cell phone policy, which prohibits employees from carrying their cell phones on the production floor, (Employer Exhibit 1) due to the safety sensitive positions and due to the serious harm of a phone (battery) having contact with the employer's materials. The claimant was aware of the policy (Employer Exhibit 4). On November 16, 2016, the claimant walked from the break room across the production floor with his cell phone in pocket, while he went to retrieve his cigarettes and keys from his production area. The administrative law judge is persuaded that the claimant was aware of the employer's safety policies inasmuch as he reported he returned to the locker room to put on his work boots so he could safely retrieve his personal items on the production floor, but failed for

unknown reasons to secure his cell phone in the locker room or somewhere other than his person.

Consequently, while walking on the production floor with the phone in his pocket, the phone became dislodged and fell to the floor, unknowingly to the claimant. The area in which the phone was found was near scrap metal that was hauled into furnaces containing molten metal. Had the phone inadvertently come into contact, employees could have been seriously injured or even killed, and an explosion could have occurred. The administrative law judge is persuaded the claimant knew or should have known the reason the employer enforced its policy was due to the severity of possible contact of cell phones with production materials. Further, the claimant had a reasonable opportunity to safely secure his cell phone when he went to the break room to change into his work boots before retrieving his personal items from the production floor. The claimant knew or should have known his carrying of the cell phone (and subsequently dropping it on the production floor) violated the reasonable policies an employer has the right to expect of its employees. The employer has satisfied its burden of proof to establish the claimant was discharged for reasons that would constitute misconduct. Benefits are denied.

DECISION:

The December 9, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs