

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARTHUR F CORTOIS
Claimant

APPEAL NO: 13A-UI-08776-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOCUS SERVICES LLC
Employer

**OC: 06/30/13
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The employer appealed a department decision dated July 24, 2013, reference 01, that held the claimant was not discharged for misconduct on June 24, 2013, and benefits are allowed. A telephone hearing was held on September 4, 2013. The claimant participated. Renee Fox, Recruiter, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant began employment on July 9, 2012, and last worked for the employer as a full-time CSR on June 24, 2013. The employer issued claimant a written discipline with a three-day suspension on May 29, 2013 for negative comments about supervisors. Claimant served the suspension and returned to work on June 3.

Claimant worked until his annual military two-week training period that ended on June 24. Claimant was observed with his cell phone on his desk and was called into a supervisor office as employees are not supposed to have personal phones on the floor.

The employer issued claimant a first and final warning for the cell phone policy violation and claimant responded with some unfavorable comments. The employer terminated claimant.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on June 24, 2013.

The employer witness did not have personal knowledge of the employer discipline and termination as she read from recorded notes and log records. Claimant denies the employer reason offered for his termination. The employer offered no written documentation to establish job disqualifying misconduct.

DECISION:

The department decision dated July 24, 2013, reference 01, is affirmed. The claimant was not discharged for misconduct on June 24, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css