

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CARLOS F RODRIGUEZ**  
Claimant

**APPEAL NO: 11A-UI-08309-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PLUMROSE USA INC**  
Employer

**OC: 05/15/11**  
**Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's June 8, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated in the hearing. Steven Pottmeyer, a representative with ADP, appeared on the employer's behalf. John Gude, the night supervisor, and Isabella Corrales, a second shift team leader, testified on the employer's behalf. Marilyn Orellana was present and available to testify. Sara Gardner interpreted the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in December 2008. He worked as a full time second shift quality control technician. Rhonda Lane supervised him. The claimant understood the employer's policy prohibited cell phones in the facility, unless the employer gave an employee permission to have and/or use a cell phone at work.

The employer talked to the claimant about four times about using his cell phone at work. In late April 2011, the employer had a meeting with the claimant and again told him he could not use his cell phone on the production floor. The claimant understood that if he was caught again using his cell phone, he would be disciplined.

The claimant kept his cell phone in his pocket. On May 17, the claimant heard his cell phone ring or vibrate. He picked up his cell phone to see who had called him. While the claimant was looking at his cell phone at work, Corrales walked by and noticed he had his cell phone. She reported her observation to management

When a supervisor talked to the claimant about his cell phone, he admitted he had used or picked up his cell phone. The claimant said that he knew he had been warned before about his cell phone and this would be last time he picked up his cell phone at work.

On May 17, 2011, the employer discharged the claimant for violating the employer's policy about using or having cell phones at work.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer talked to the claimant several times about not using his cell phone at work. In late April 2011, the employer had a meeting with the claimant explaining that he could not use a cell phone at work. The claimant understood he would be disciplined if used his cell phone at work again. Even though the employer's policy states cell phones cannot be brought into the facility, employees bring them to work. The claimant's mistake was to keep his cell phone in a pocket so he could see who called or texted him at work. Even though the employer had warned him about being disciplined if he continued to use his cell phone, which includes texting, the claimant kept his cell phone with him at work.

The claimant's failure to keep his cell phone at home or in his car after the employer warned him amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The claimant committed work-connected misconduct. As of May 15, 2011, he is not qualified to receive benefits.

An issue of overpayment for benefits the claimant may have received since May 15 or whether he is eligible for a waiver of any overpayment will be remanded to the Claims Section to determine.

**DECISION:**

The representative's June 8, 2011 determination (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of May 15, 2011. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw