

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**GENELLE L VER MEER
907 HAYES AVE
HULL IA 51239**

**HOPE HAVEN INC
1800 – 19TH ST
ROCK VALLEY IA 51247**

**Appeal Number: 05A-UI-06467-LT
OC: 05-15-05 R: 01
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the June 6, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 8, 2005. Claimant did participate. Employer did participate through Linda Diekevers and Mark De Ruyter. Claimant's Exhibit A was received. Employer's Exhibit 1 was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time lead instructor from January 7, 2005 through May 13, 2005 when she was discharged. On May 10, Linda Diekevers, supervisor, and April Dose, coworker, heard claimant's cell phone ring at work three times within 40 minutes and observed her at least once answer it and talk to a friend and discuss a car. Diekevers also saw on claimant's computer

screen that she was looking for houses on the Internet. This demonstrated an unwillingness to change as employer had told her on April 12, 2005 to use cell phones for emergency use only and told her not to watch television or use the laptop computer at work for personal use or entertainment. The topic was also covered in a team meeting. Also at a meeting on either April 12 or 11, 2005, Diekevers instructed claimant to be more interactive with consumers.

There had been no improvement in deficit areas after the warnings. Some consumers had problems with urinating on the floor and claimant wrote in a logbook and verbally in front of coworkers and consumers referred to it as "pissing" their pants or "pissing" on the floor. A March 29 disciplinary meeting was held addressing this topic.

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 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Claimant's violation on May 10 of the April 12 warning about usage of a personal cell phone at work and personal use of the employer's computer is deliberate misconduct. Benefits are denied.

DECISION:

The June 6, 2005, reference 01, decision is affirmed. 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.

dml/sc