

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SABRINA PORTER
Claimant

APPEAL NO: 15A-UI-09572-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARKETLINK INC
Employer

OC: 08/02/15
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 20, 2015, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 10, 2015. The claimant participated in the hearing with Attorney Randall Schueller. Shaylene Houston, Human Resources Supervisor; Kelley Hauschildt, Call Center Director; Travis Hoffpaur, Sales Supervisor; and Kassie Seals, Sales Supervisor; participated in the hearing on behalf of the employer. Employer's Exhibits One through Three were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time telephone sales representative for Marketlink from September 22, 2014 to August 5, 2015. She was discharged for having her cell phone in her purse on vibrate on the sales floor.

On July 9, 2015, Travis Hoffpaur, Sales Supervisor, witnessed the claimant with her cell phone out on the call center floor in violation of the employer's policy and the claimant received a written warning. The claimant acknowledges she had her cell phone out at her desk and was aware it was a violation of the employer's policy. She accepted responsibility for her actions, stated there was no excuse for her actions, and signed the written warning.

On August 15, 2015, Sales Supervisor Cassie Seals walked behind the claimant's cubicle and observed she had her purse on her lap and believed she saw the claimant's hand on her cell phone with the screen turned on. She went and told the claimant's supervisor and the claimant's employment was terminated approximately 45 minutes later.

The claimant agrees she had her purse on her lap because she was going to grab her body spray but then thought better of it because she remembered her supervisor telling her that some employees were allergic to perfumes and body sprays and consequently she did not remove the body spray from her purse. She said her phone was in the center of her purse on vibrate, which she agrees was a violation of the employer's policy, but stated that is how most employees left their cell phones in their desks. She denies ever touching her cell phone August 5, 2015. The employer does provide lockers for employees to leave their purses and other personal belongings in but due to an injury the claimant was not able to access her locker because it was very low to the ground. She had requested a higher locker but did not receive one and therefore kept her purse in her drawer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant was forthcoming about violating the employer's cell phone policy July 9, 2015, by having it out at her desk on the call center floor when she was aware that activity was not allowed. She credibly denies, however, touching her cell phone August 5, 2015, when Ms. Seals stated she saw the claimant grab her cell phone from in her purse while she was walking past the back of the claimant's cubicle. The claimant was not using her phone but was looking for another item in her purse when Ms. Seals apparently walked by her cubicle and it is possible Ms. Seals believed she saw the claimant grabbing her cell phone when she was actually reaching back over her phone for her body spray. While the employer does provide lockers for the employees, the claimant adequately addressed that issue by explaining her locker was too low to the floor for her to be able to use it because of a previous injury.

Under these circumstances, the administrative law judge concludes the claimant's actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. The violation must be willful and substantial and the claimant's actions were not. Therefore, benefits are allowed.

DECISION:

The August 20, 2015, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs