

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**HELENA JONES**

Claimant

**APPEAL NO. 19A-UI-03656-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FOCUS SERVICES LLC**

Employer

**OC: 04/07/19**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Helena Jones (claimant) appealed a representative's April 26, 2019, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from work with Focus Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 7, 2019. The claimant participated personally. The employer participated by Naomi Strange, Human Resources Assistant; Joy Hoagland, Director; and Rachel Jetter, Senior Coach. The employer offered and Exhibit 1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 1, 2017, as a full-time customer service representative. She signed for receipt of the employer's handbook when she was hired. The employer did not issue the claimant any written warnings during her employment.

The Clean Desk Policy was a part of the employer's handbook. It stated, "Phones, Tablets and other electronic devices are no (sic) allowed at the agent stations and should never be used for the recording of any customer specific information." The claimant regularly saw employees and management use personal cellphones at work to talk and access websites. The employer did not issue the claimant a written warning or tell her she could be terminated for using her cellphone inappropriately.

On April 10, 2019, the director wanted to talk to the claimant about a report she received of the claimant being on her cellphone. The director prepared a final written warning to give to the claimant and sent a trainer to bring the claimant to her. The claimant was on a call with a customer when the trainer approached her and began to give her instructions. The customer could hear the trainer talking and the claimant muted the call. The trainer told the claimant to go to the director's office immediately. The claimant told the trainer she would go the director's

office after completing the call and break. The employer had specific rules regarding the timing of breaks. The claimant unmuted the call and went back to the customer. The trainer left the area.

The claimant completed the call and her notes on the call. As she was finishing her notes and indicating she was leaving for break, a senior coach approached her and told her twice to go to the director's office. The claimant proceeded to the office and stood while the director completed a conversation she was having on her cellphone. The claimant did not want to sit because she had back issues from an automobile accident. She had been sitting at work for a long period. The director knew about the claimant's automobile accident.

The senior coach entered the room and directed the claimant to the chair she was supposed to sit in. The director said, "You need to sit down." The claimant asked the director not to treat her like a child. The director said, "Don't act like a child. If you don't want to sit down, you can leave." The claimant asked the director if she meant for the day. The director said, "No, like never coming back". The claimant said, "You're telling me that you're firing me for not sitting down". The director said, "Yeah". On April 10, 2019, the director terminated the claimant for having a bad attitude, putting her hands on her hips, and not sitting.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa App. 1985). The employer's request for the claimant to sit appeared to be a reasonable request. The director did not ask the claimant for a reason for her failure to follow her instruction. If she had, she would have learned of the claimant's medical issue. The claimant had a medical reason for her noncompliance. The employer discharged the claimant and has the burden of proof to show misconduct. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

The testimony of the employer and the claimant was not the same. The administrative law judge finds the testimony of the claimant to be more credible. The employer's testimony was internally inconsistent.

**DECISION:**

The representative's April 26, 2019, decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs