

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JACQUELINE SCIORROTTA**

Claimant

**APPEAL NO. 08A-UI-06557-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REE'S CONTRACT SERVICE INC**

Employer

**OC: 06/15/08 R: 02  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the July 9, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on July 30, 2008. The claimant participated personally. The employer participated through David Edmunds, Contract Specialist. The claimant offered and Exhibits A, B, C, and D were received into evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on September 16, 2002, as a full-time security guard. The employer issued the claimant written warnings on August 14, 2006, March 21, and June 13, 2007, and April 14, 2008, for failure to follow instructions. One of the warnings was issued to the claimant because she carried her cellular telephone on her person when she worked. She had a child with special needs. The claimant gave the school her work number, but when her child broke his leg, the employer failed to notify the claimant of the injury. The claimant continued to carry her cellular telephone for the safety of her child. The claimant felt the warnings were arbitrary. She filed a federal law suit against the employer on February 18, 2008.

On June 19, 2008, the employer issued the claimant a written warning for carrying a cellular telephone with her on May 29, 2008, and for having her back to traffic on June 3, 2008. The claimant was supposed to watch in all directions and could not do so unless her back was to one area or another. After issuing the warnings, the employer terminated the claimant.

## 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:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 employer must establish not only misconduct, but that there was a final incident of misconduct that precipitated the discharge. The last incidents provided by the employer occurred on May 29 and June 3, 2008. More than two weeks passed before the employer terminated the claimant. The employer has failed to provide a final incident of misconduct close enough in time to the discharge. Misconduct has not been established. Benefits are allowed.

**DECISION:**

The July 9, 2008, reference 01, representative's decision is affirmed. 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/kjw