

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

IEISHA L HENDERSON
Claimant

APPEAL 19A-UI-01486-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ENLIGHTEN TECHNOLOGIES INC
Employer

**OC: 01/20/19
Claimant: Respondent (2)**

Iowa Code § 96.5(2) – Discharge for Misconduct
Iowa Code § 96.3(7) – Payment – Overpayment
Iowa Admin. Code r. 871-24.32 – DM – Discharge for misconduct
Iowa Admin. Code r. 871-24.10 – Payment – Employer participation in fact-finding interview

STATEMENT OF THE CASE:

Enlighten Technologies, Inc., Employer, filed an appeal from the February 11, 2019 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on March 6, 2019 at 9:00 a.m. Claimant did not participate. Employer participated through Vincent Pundt, Vice President. Employer's Exhibits 1 - 2 were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant's separation was a discharge due to disqualifying job-related misconduct.
Whether claimant was overpaid benefits.
Whether claimant should repay those benefits and/or whether employer should be charged due to its participation in the fact-finding interview.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an account representative from November 19, 2018 until her employment with Enlighten Technologies, Inc. ended on January 13, 2019. (Pundt Testimony) Claimant's direct supervisor was Vincent Pundt. (Pundt Testimony) Claimant's schedule was Monday through Friday from 8:00 a.m. until 4:30 p.m. (Pundt Testimony)

Employer has a policy prohibiting employees from using their personal cell phones while at work. (Pundt Testimony) Claimant acknowledged receipt of the policy. (Exhibit 1) Claimant used her cell phone at work in violation of the policy. (Pundt Testimony) Claimant received a verbal warning regarding the use of her cell phone at work. (Pundt Testimony) There are signs posted in claimant's work area that warn continued use of a cell phone after being warned may result in termination. (Pundt Testimony) During the week of January 11, 2019, claimant was observed using her cell phone at work after having received a verbal warning. (Pundt Testimony) Claimant admits to using her cell phone while at work. (Exhibit 2) On January 13, 2019, employer discharged claimant for violation of the policy prohibiting cell phone use at work. (Pundt Testimony)

The administrative record reflects that claimant has neither filed for nor received unemployment insurance benefits, since filing her original claim on January 20, 2019. Employer personally

participated in the fact-finding interview through Vice President Vincent Pundt. (Pundt Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for disqualifying, job-related misconduct. Benefits are denied.

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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r. 871-24.32(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.

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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 Bd.*, 616 N.W.2d 661 (Iowa 2000).

Claimant's use of her cell phone while at work was a violation of a known company policy. Claimant's continued use of her cell phone at work after being warned is disqualifying work-related misconduct. Benefits are denied.

Because no benefits were paid to claimant, the issues of overpayment, repayment and chargeability are moot.

DECISION:

The February 11, 2019 (reference 01) unemployment insurance decision is reversed. Benefits are denied until such time as the claimant works in and has been paid wages for insured work equal to ten times claimant's weekly benefit amount. The issues of overpayment, repayment and chargeability are moot.

Adrienne C. Williamson
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Decision Dated and Mailed

acw/rvs