

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

LETICIA FUENTES  
748 GRACE ST  
OTTUMWA IA 52501

EXPERIAN MARKETING SOLUTIONS INC  
c/o TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-06158-DWT  
OC: 05/16/04 R: 03  
Claimant: Appellant (2)

**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, 4<sup>th</sup> 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 are 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Leticia Fuentes (claimant) appealed a representative's May 28, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Experian Marketing Solutions, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known address of record, a telephone hearing was held on June 28, 2004. The claimant participated in the hearing. Marty Young, a representative with TALX, appeared on the employer's behalf with Tammy Shull, the human resource manager, as a witness. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

#### FINDINGS OF FACT:

The claimant started working for the employer in November 1998. The claimant worked as a full-time training coordinator. Rob Anderson was the claimant's supervisor. Even though the claimant did not provide training concerning the employer's violence-free workplace policy, she knew about and understood this policy. The policy informs employees that the employer has zero tolerance for any kind of workplace violence including verbal abuse.

On May 12, 2004, a male employee became upset with the claimant after she indicated she was busy and could not do everything he asked her to do right away. The male employee swore at the claimant and verbally abused her. The claimant was upset and walked away from the male employee. Within a short time, the claimant and male employee encountered one another. The male employee struck the claimant in the face. The claimant reacted by putting her hands to his face. The claimant scratched the male and he bit her finger. The claimant reported the incident to the employer and she received medical treatment at a hospital.

The employer concluded the claimant did not properly report the male employee's initial abusive language, which could have prevented the situation. The employer concluded the claimant went back to the male employee to give him a tag when he hit her. Instead, of walking away, the employer concluded the claimant was so angry she scratched the employee. Based on the claimant's version of what happened, the employer concluded she failed to take the proper steps to avoid the incident and discharged her for violating the employer's violence-free policy in the workplace. The employer discharged the claimant on May 14, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §965-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant understood the employer did not allow any workplace violence, including verbal abuse. Even if the claimant had the opportunity to but did not immediately report the male employee's verbal abuse directed against her, the claimant had no way of knowing the employee was going to "punch" her in the mouth. When a person is hit, a natural reaction would be anger and/or self-defense. When the claimant only scratched the male employee

after he hit her in the mouth. This conduct may amount to poor judgment, but her actions do not rise to the level of work-connected misconduct.

Based on the employer's investigation and a strict interpretation of the employer's no violence in the workplace policy, the employer established business reasons for discharging the claimant. The facts do not, however, establish that the claimant intentionally or substantially violated the standard of behavior the employer had a right to expect from her. The claimant did not commit work-connected misconduct. As of May 16, 2004, the claimant is qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's May 28, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of May 16, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf