

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ANGELA S VIGNAROLI**  
Claimant

**EGS CUSTOMER CARE INC**  
Employer

**APPEAL 16A-UI-12308-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/09/16  
Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from the November 7, 2016, (reference 01) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on December 5, 2016. Claimant participated. Employer participated through human resources generalist Turkessa Newsone and team leader Coleen Cox. The administrative law judge took official notice of the administrative record, including fact-finding documents.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time resolution specialist through October 13, 2016. The employer reviewed a call during which the claimant admittedly became frustrated because the caller, who did not speak English well, kept asking the same question even after she called the pharmacy on her behalf to resolve the issue and told her she would have to call the pharmacy to find out when the prescription would be ready to pick up. She did not ask her if she would like an interpreter because she had been told the request must originate from the caller, as are transfers to a supervisor. She also believed the customer may escalate if offered an interpreter. Claimant did not cut off the customer as much as the customer cut her off while she was trying to explain the situation. She did not tell the customer it is “not our issue.” She did not believe she was yelling and was unaware of her voice volume until trainer Carrie told her she was getting loud. This was not typical of claimant’s call-handling as she had calls with 100 percent quality two days earlier.

The employer had warned her in writing on October 2, 2015, for a complaint about an outgoing call review related to discourteous tone, over-talking, and cutting off the caller when they asked for a 24-hour supervisor call back. The employer did not allow claimant to hear the call and she does not recall the details. There have been no other “problem” calls brought to her attention. No recording of either call was provided by the employer for the hearing.

## REASONING AND CONCLUSIONS OF LAW:

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

When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. Iowa Dep't Human Servs.*, 461 N.W.2d 603, 607 (Iowa Ct. App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14(1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976).

Mindful of the ruling in *Crosser, id.*, and noting that the claimant presented direct, first-hand testimony while the employer relied upon second-hand recounts without providing a copy of the recorded calls at issue, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer.

Iowa Code section 96.5(2)a provides:

### **Causes for disqualification.**

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. *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).

Misconduct “must be substantial” to justify the denial of unemployment benefits. *Lee*, 616 N.W.2d at 665 (citation omitted). “Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits.” *Id.* (citation omitted). ...the definition of misconduct requires more than a “disregard” it requires a “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.” Iowa Admin. Code r. 871–24.32(1)(a) (emphasis added).

Whether an employee violated an employer’s policies is a different issue from whether the employee is disqualified for misconduct for purposes of unemployment insurance benefits. See *Lee v. Emp’t Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000) (“Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits.” (Quoting *Reigelsberger*, 500 N.W.2d at 66.)).

The incidents for which claimant was discharged were the result of unintentional errors or poor judgment but not because of intentional rudeness or unwillingness to resolve the issue for the caller. Although there was a prior warning for a similar incident, it was more than a year earlier. This length of time between incidents combined with the employer’s failure to allow her to listen to the 2015 call indicates there was not a pattern of deliberate conduct, omission or negligence in breach of the employer’s interests.

**DECISION:**

The November 7, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs