

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KALYNA M THOMAS
Claimant

APPEAL NO: 12A-UI-00854-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TM1 STOP LLC
Employer

**OC: 12/11/11
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's January 10, 2012 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. The employer responded to the hearing notice and was called for the hearing. The employer did not answer the phone. A message was left for the employer to contact the Appeals Section immediately, if he wanted to participate in the hearing. The employer did not respond to the message left for him. During the hearing, Claimant Exhibit A the CRMone/AT & T –Saves Certification form, was offered and admitted as evidence. Based on the evidence, the claimant's arguments, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in September 2010. When she started she was trained as a phone operator in the Midwest region. The claimant was promoted and then processed disconnect orders. When this work slowed down, she was asked to go back to telephone sales. The employer assigned the claimant to work in the Southeast region even though the claimant asked to work the Midwest region. The claimant took tests to find out if she understood the plans and procedures in the Southeast region. After she took the test three times and did not pass, she asked the employer for additional training. The employer denied the claimant's request for additional training.

The employer asked the claimant to sign a form, Claimant Exhibit A, stating she had successfully completed the training in the Saves program. The claimant would not sign the form because she had not successfully completed the program which was verified by her test results. The employer discharged the claimant on December 15 for failing to sign the CRMone/AT&T - Saves Certification Form, Claimant Exhibit A.

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 § 96.5(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 evidence indicates the employer's insistence that the claimant sign a form indicating she successfully completed training on topics was not reasonable. The fact the claimant failed three tests that tested her knowledge about these topics supports the claimant's statement that she needed further training in these areas. The employer may have had business reasons for discharging the claimant, but the evidence does not establish that she committed work-connected misconduct. Therefore, as of December 11, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's January 10, 2012 determination (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of December 11, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css