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

STEPHANIE J STEELE
2816 MAPLE ST
DES MOINES IA 50317

QWEST CORPORATION
C/O EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 05A-UI-08714-RT
OC: 07-24-05 R: 02
Claimant: Respondent (1)

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, 4th 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 is 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.

_____
(Administrative law judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Qwest Corporation, filed a timely appeal from an unemployment insurance decision dated August 17, 2005, reference 01, allowing unemployment insurance benefits to the claimant, Stephanie J. Steele. After due notice was issued, a telephone hearing was held on September 8, 2005, with the claimant participating. The claimant was represented by Fran Timmons, Executive Vice President of Union Local 7102 for the Communication Workers of America Union. Tracie Sargent, Supervisor participated in the hearing for the employer. The employer was represented by Judi McBroom of Employers Unity, Inc. Employer's Exhibit One

was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibit One, the administrative law judge finds: The claimant was employed by the employer as a full time screening consultant from September 23, 2002 until she was discharged on July 26, 2005. The claimant was to receive telephone calls from customers experiencing problems with their telephones. The claimant, as were all similarly situated employees, was encouraged to keep each call to 300 seconds or 5 minutes or less. The employer looked at this as an average but nevertheless encouraged each call to be no more than 300 seconds. The employer has policies requiring that employees, including the claimant, be polite, courteous, and professional to customers who call.

On July 14, 2005, the claimant received a customer call about a telephone problem. The claimant had no information on her computer screen. The claimant listened to the customer for approximately four and a half minutes but could not get any information that the claimant needed to identify the problem. The claimant finally said something about she only needed the history of the past few minutes. The claimant asked one question which she requested that the customer answer with a yes or no response. The employer maintained that the claimant should have allowed the customer to explain the situation. In any event, the customer asked to speak to another customer service representative. The claimant refused because that was against the employer's policy. Eventually, after speaking to a couple of other individuals, the customer spoke with the claimant's supervisor, Tracie Sargent, the employer's witness. The customer complained to Ms. Sargent and the claimant was discharged on July 26, 2005. The claimant's conversation was overheard by a DSL representative who initially took the call but then stayed on the line and heard the claimant's response. The DSL representative then called her manager who listened in on the conversation as well.

The claimant had received previous warnings or disciplines some of which are shown at Employer's Exhibit One. The claimant received a record of discussion on June 16, 2003, which is an oral warning with a written record, for customer complaints. The claimant then received a warning of dismissal on July 13, 2004 for hanging up on a customer. The claimant did so because the customer was using profanity and slang directed at the claimant. The claimant asked the customer three times to stop and when the customer did not the claimant did hang up on the customer. The claimant also received a joint action plan on July 16, 2004 for customer complaints. The claimant received a second joint action plan on December 21, 2004 but it is not included in Employer's Exhibit One. The claimant then received a warning of dismissal on May 3, 2005 because of a customer complaint because the claimant put the customer on hold. The claimant did put the customer on hold. The customer was upset which caused the claimant to get upset. She put the customer on hold so that both could cool off. The claimant also received approximately seven oral warnings from 2003 to 2005 for dealing with customers. On the other hand, the claimant received between 22 and 25 customer commendations for the claimant's good work. When the claimant was being warned for customer complaints, the claimant asked if she could sit in with a peer and listen to how the peer dealt with difficult customers. The claimant was not allowed to do this. Rather, a peer was allowed to sit with the claimant and listen to the claimant's conversations and then offer suggestions. The employer has a website about working with customers but many of the claimant's problems are not set out on the website. Pursuant to her claim for unemployment insurance benefits filed effective July 24, 2005, the claimant has received unemployment

insurance benefits in the amount of $1,796.00 as follows: $337.00 per week for four weeks from benefit week beginning July 30, 2005 to benefit week ending August 20, 2005 and $146.00 for benefit week ending August 27, 2005 (earnings $275.00) and $216.00 for benefit week ending September 3, 2005 and $86.00 for benefit week ending September 10, 2005.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was not.

2. Whether the claimant is overpaid unemployment insurance benefits She is not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The parties agree, and the administrative law judge concludes, that the claimant was discharged on July 26, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying

misconduct. It is well established that the employer has the burden to prove disqualifying misconduct. See Iowa Code section 96.6(2) and Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982) and its progeny. Although it is a close question, the administrative law judge concludes that the employer has failed to meet its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct.

The claimant was discharged for the customer complaint arising out of a telephone call between the customer and the claimant on July 14, 2005. The customer spent approximately four and a half minutes describing the situation to the claimant but not giving the claimant any specific information that the claimant required. No information on the customer came up on the claimant's computer screen. The claimant is encouraged to complete each call in 300 seconds or 5 minutes. Although the employer looks at an average for this amount, the employees are encouraged to make each call 300 seconds or less. Because the claimant was close to exhausting her 300 seconds, the claimant told the customer that she needed a history of just the past few minutes and for one question asked the customer to answer yes or no. Apparently the customer took offense to this and asked for another telephone representative but the claimant refused because this is against the employer's policy. The customer then asked for the claimant's supervisor and the claimant was trying to get the supervisor. However, other individuals got involved in the telephone conversation. Eventually the customer talked to the claimant's supervisor and made a complaint. The employer does have policies requiring that employees be polite, courteous, and professional to customers. The employer determined that the claimant had not been with the customer in question on July 14, 2005 and discharged the claimant.

On the record here, although it is a close question, the administrative law judge is constrained to conclude that the claimant's behavior with the customer on July 14, 2005 was not a deliberate act constituting a material breach of her duties and obligations arising out of her worker's contract of employment nor does it evince a willful or wanton disregard of the employer's interest nor is it carelessness or negligence in such a degree of recurrence as to establish disqualifying misconduct. Rather, the administrative law judge concludes that the claimant's behavior was mere inefficiency, unsatisfactory conduct, failure in good performance as a result of inability or incapacity or ordinary negligence in an isolated instance or a good faith error in judgment or discretion and is not disqualifying misconduct. The evidence establishes that each employee is encouraged to keep each call to less than 300 seconds or 5 minutes. Although the employer looks at an average it does encourage each phone call to be kept to that minimum. Knowing this and because the customer went on for four and a half minutes and the claimant was unable to get the information she required in order to help the customer, the claimant may have been somewhat curt with the customer. The administrative law judge does not believe that this was disqualifying misconduct or a breach of her duty to be polite, courteous, and professional. The administrative law judge specifically notes that the claimant is operating under a quota of no more than 300 seconds per phone conversation. The administrative law judge also does not believe that the statements made by the claimant were all that severe.

It is true that the claimant did receive various warnings as shown at Employer's Exhibit One and as set out in the findings of fact. However, the claimant had explanations for some of those including hanging up on a customer who was using profanity and slang directed at the claimant and putting a customer on hold when both the claimant and the customer were upset. The administrative law judge specifically notes that these warnings including the oral warnings were customer complaints but that the claimant also had between 22 and 25 customer

commendations. The administrative law judge also notes that the claimant had specifically asked to sit with a peer and listen to the peer deal with difficult customers so that the claimant would learn how to do this. The employer did not allow the claimant to do that but rather had a peer sit with the claimant and listen to the claimant's conversations and then offer suggestions. This is a close question, but on the record here, the administrative law judge is constrained to conclude that there is not a preponderance of the evidence of any acts on the part of the claimant that would be disqualifying misconduct

In summary, and for all the reasons set out above, the administrative law judge concludes that the claimant was discharged but not for disqualifying misconduct and, as a consequence, she is not disqualified to receive unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment insurance benefits and misconduct to support a disqualification from unemployment insurance benefits must be substantial in nature. Fairfield Toyota, Inc. v. Bruegge, 449 N.W.2d 395 (Iowa App. 1989). The administrative law judge concludes there is insufficient evidence here of substantial misconduct on the part of the claimant to warrant her disqualification to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant, provided she is otherwise eligible.

Iowa Code Section 96.3-7 provides:

> 7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.
>
> If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of $1,796.00 since separating from the employer herein or about July 26, 2005 and filing for such benefits effective July 24, 2005. The administrative law judge further concludes that the claimant is entitled to these benefits and is not overpaid such benefits.

DECISION:

The representative's decision of August 17, 2005, reference 01 is affirmed. The claimant, Stephanie J. Steele, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible, because she was discharged but not for disqualifying misconduct. As a result of this decision the claimant is not overpaid any unemployment insurance benefits arising out of her separation from the employer herein.

kkf/kjf