

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

AMY N WATTS
1645½ CENTRAL #4
DUBUQUE IA 52001

APAC CUSTOMER SERVICES INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166 0283

Appeal Number: 05A-UI-02726-DWT
OC: 02/13/05 R: 04
Claimant: Appellant (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

STATEMENT OF THE CASE:

Amy N. Watts (claimant) appealed a representative's March 11, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of APAC Customer Services, 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 addresses of record, a telephone hearing was held on March 31, 2005. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which she could be contacted to participate in the hearing. As a result, no one represented the claimant. Rose Walter, an administrative assistant, appeared on the employer's behalf. 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 on January 19, 2004. The claimant worked as a part-time telephone sales representative. Nate Foley was the claimant's supervisor.

The claimant received a copy of the employer's written policy that informs employees they can be discharged for using profanity at work. On February 7, 2005, the claimant told a manager, "I don't care about this shitty job." The claimant was working in close proximity to other employees. These employees complained about the claimant's comment because their customers heard the claimant's comment. The employer discharged the claimant on February 7, 2005, for using profanity at work.

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. 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 facts establish the claimant knew or should have known profanity was prohibited on the calling floor. The claimant committed work-connected misconduct when she made an inappropriate comment so loud that her co-workers complained because their telephone customers heard the claimant's remark. As of February 13, 2005, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 11, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 13, 2005. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

dlw/sc