

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CHRISTOPHER M SELLERS
Claimant

APPEAL NO. 19A-UI-00188-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MEDIACOM COMMUNICATIONS
Employer

OC: 12/02/18
Claimant: Respondent (1)

Section 96.5-1 - Voluntary Quit
Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Mediacom Communications (employer) appealed a representative's December 27, 2018, decision (reference 01) that concluded Christopher Sellers (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 24, 2019. The claimant participated personally. The employer participated by Carolyn Johnson, Human Resources Manager, and Todd Robinson, Director of Area Operations. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 14, 2015, as a full-time broadband specialist two. He signed for receipt of the employer's handbook on December 14, 2015. The handbook stated that misrepresentation or falsification of company records may subject employees to termination of employment on the first offense.

The claimant had a larger service area than others. He took some shortcuts so that he would have employer support during his working hours. If he did not take shortcuts, he would work late hours with no support. The claimant tried calling his supervisor when he worked late but the supervisor did not respond. The employer conducted an audit and found that from August 2017 to May 2018, the claimant did not physically disconnect service at fifty-four of the ninety-nine locations he reported.

On May 17, 2018, the employer issued the claimant a final written warning for disconnecting service at "the ground block or SDU box, not the tap". The claimant explained his situation and lack of support to his supervisor. The employer notified the claimant that further infractions could result in termination from employment.

After the May 17, 2018, warning the claimant continued to work and made no more shortcuts. The employer conducted a second audit from September 26, 2018, to October 26, 2018. This time the claimant did not physically disconnect service at eleven of the twenty-three locations he reported. The employer received the report on or about October 27, 2018. On November 9, 2018, the technical operations manager talked to the claimant about the additional incorrect disconnects. The claimant could not understand them. If they occurred, they were not intentional. The employer did not offer any documentation to support its allegation. The technical operations manager told the claimant that the information had been passed along and he could be terminated.

The claimant continued to work until November 29, 2018. On that date, the employer decided to terminate him for misrepresentation or falsification of company records. The employer met with the claimant and talked about a work accident and incorrect disconnects. It had the claimant sign a termination document that he was not allowed to keep. The claimant was not told why he was terminated.

The claimant filed for unemployment insurance benefits with an effective date of December 2, 2018. The employer provided the name and number of Carolyn Johnson as the person who would participate in the fact-finding interview on December 26, 2018. The fact finder called Ms. Johnson but she was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message. The employer provided some documents for the fact finding interview. The employer did not identify the dates or the specific rule or policy that the claimant violated which caused the separation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer occurred on an unknown date prior to October 27, 2018. The employer learned of the claimant's actions on or about October 28, 2018. The claimant was not discharged until November 29, 2018. A day prior to October 27, 2018, is too remote from November 29, 2018. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

DECISION:

The representative's December 27, 2018, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs