

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

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APAC CUSTOMER SERVICES OF IOWA
C/O TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166 0283

Appeal Number: 06A-UI-07259-DWT
OC: 06/18/06 R: 04
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

STATEMENT OF THE CASE:

APAC Customer Services of Iowa LLC (employer) appealed a representative's July 7, 2006 decision (reference 01) that concluded Steffan Schay (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 8, 2006. The claimant participated in the hearing. Turkessa Hill, the benefits administrator, 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 October 7, 2002. The claimant worked as a full-time customer service representative.

A year or more ago, the claimant received a first and final written warning for being rude toward a customer. The warning occurred when the claimant worked on the account of a newspaper in San Diego. A customer who was hard of hearing called and talked to the claimant because his paper had not been delivered. A hold had been put on the customer's account because he had not paid for the paper. In an attempt to achieve customer satisfaction, the claimant gave the customer two options. Since the gentleman was hard of hearing, the claimant spoke very loudly so the customer could hear and understand the claimant over the phone. Representatives from the newspaper heard the claimant's conversation with this customer. Since the newspaper's representatives concluded the claimant's comments were inappropriate and that the claimant had been rude toward this customer, the claimant received the first and final written warning.

After receiving the above written warning, the employer may have talked to the claimant at various times about other issues with phone calls as a result of the employer's on-going quality control. On June 3, 2006, the claimant took a call from a woman who believed the claimant or one of the claimant's co-workers had just called her and she wanted the calls to stop. When the customer insisted a Hispanic gentleman has just called her from the phone number the claimant answered, the claimant responded that he saw everyone who was working with him, and there was no one present as the customer had described. The claimant also indicated that the customer was well informed about the Do Not Call law. While the claimant considered this call very unique, he did not become upset with the customer. During the conversation, the claimant gave the customer his name and spelled his name for the customer.

The customer complained directly to the San Diego newspaper, the employer's client, that the claimant had been rude and made inappropriate comments to her. The San Diego newspaper client then complained about the claimant. On June 5, 2006, the employer placed the claimant on a paid leave so management could investigate the complaint.

On June 14, the employer sent the claimant a letter informing him that he had been discharged. The employer discharged the claimant based on the customer's complaint regarding the June 3 conversation he had with the claimant. As a general policy, the employer never questions the truthfulness of a customer's complaint.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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).

Based on the evidence presented during the hearing, the employer did not establish that the claimant intentionally or even substantially disregarded the employer's interests by the comments he made during a June 3 phone call. While the claimant could have handled the situation with the female caller differently, the facts do not indicate he was rude or even made inappropriate comments. The employer did not present information as to why the female customer considered the claimant rude or what she even reported to the employer's client.

The employer established compelling business reasons for discharging the claimant; but the facts do not establish that the claimant committed work-connected misconduct. As of June 18, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's July 7, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of June 18, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjw