

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RACHELLE L WICKLIFF
Claimant

CALERIS INC
Employer

APPEAL NO. 14A-UI-10411-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/07/14
Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 1, 2014, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on October 27, 2014. Claimant participated personally and was represented by counsel Sioban Schneider. Employer participated by Stacey Springer. Employer's Exhibits One through Seven were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on June 24, 2014. Claimant worked as a technical support representative, handling phone calls of disgruntled customers who needed service of some type. Employer discharged claimant on June 24, 2014 because claimant repeatedly did not get back in touch with customers within the two minute time period she had been trained to follow when she placed them on hold.

Claimant would explain to customers that she would be researching the customers' issues and then place them on hold. At times this research would take well over two minutes. Company policy and training dictated that claimant should be back in touch with the customers every two minutes to alert them to any updates and make them understand that they haven't been forgotten. Claimant had multiple occasions where customers hung up on her after waiting over five minutes without anyone checking back in with them. Claimant received multiple verbal and written warnings about these actions, but would become too busy attempting to aid the customers to check back with them every two minutes as per company policy.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

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(4), (8) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

(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 gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. In the current matter, claimant had received numerous teachings and warnings about following company policy, and claimant often did follow this policy. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning the wait times for customers placed on hold. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant was able to follow the policy, but often did not as she was busy. Employers multiple warnings to claimant needed to serve as an alert that claimant's occasional actions must change. But they did not. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated October 1, 2014, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/can