

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGIE L WRIGHT
Claimant

APPEAL NO. 09A-UI-05994-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

OC: 03/15/09
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated April 7, 2009, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 13, 2009. The claimant participated personally. The employer participated by Mr. Bill O'Neil, Hearing Representative, and witness, Mr. Jacob Durik, Manager. Employer's Exhibits One through Four were received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant was employed as a full-time customer service representative for Qwest Corporation from February 12, 2007 until March 16, 2009 when she was discharged for violation of company policy. The claimant was paid by the hour and by incentive bonuses. Her immediate supervisor was Jacob Durik.

The claimant was discharged after it was determined that she had engaged in falsifying company records by indicating transfer of service to a client's same address and same service although the client had not requested the change. The purpose of the claimant's entering of service requests that had not been made by the client was to increase her percentage of service numbers for each reporting period.

Under company policy employees are not authorized to request change or in any other manner alter a client's service without the knowledge and authorization of the client. Employees are provided initial training and supervisors are available to answer any questions regarding company policy or procedures.

It is the claimant's position that an unknown senior company representative had suggested this manner of making it appear that service numbers were higher than they actually were. The claimant did not bring the matter to the attention of her immediate supervisor or receive authorization to vary from company training before implementing the unauthorized service changes. Unauthorized service changes often result in complaints to the company because clients are initially billed for service changes that they have not ordered. The charges to clients may later be removed, however.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

The evidence in the record establishes that the claimant had been trained in her duties as a customer service representative for Qwest Corporation and was aware of the strict requirement that all service changes or sales be authorized specifically by the client. The evidence in the record establishes the claimant chose to vary from this procedure that is required not only by company policy but by federal law by entering a number of service changes for clients that had not been authorized by the client. The purpose of the claimant's actions was to increase her productivity reports for the reporting period. The claimant's conduct caused extra billing to be placed on the client's bill initially and the potential for complaints by customers was high.

The administrative law judge is cognizant that the claimant maintains that a "unknown" senior representative instructed her on how to make these entries to increase her productivity. The administrative law judge notes that although the claimant's supervisor was available on a daily basis, Ms. Wright did not choose to verify that the procedure that she was implementing was acceptable to the company. The claimant did not go to any other management individual to verify that the information provided by this "unknown" person was reliable or should be followed.

Based upon the training that was provided to the claimant by the company which included a review of company policy and federal requirements with respect to authorization by customers for changes, the administrative law judge concludes that the claimant knew or should have known that any variation from the standards was contrary to the employer's interests and constituted misconduct in connection with the work.

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.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated April 7, 2009, reference 01, is reversed. Angie Wright is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, providing that she is otherwise eligible. The issue of whether the claimant must repay the unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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