

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHANTEL JONES**  
Claimant

**APPEAL NO: 09A-UI-08005-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FIRST ADVANTAGE MEMBERSHIP  
SERVICES INC**  
Employer

**OC: 04-05-09**  
**Claimant: Respondent (2-R)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the May 21, 2009, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 6, 2009. The claimant participated in the hearing. Michelle Basile, Call Center Manager; Chad Bennett, Human Resources Director; and Michelle Hawkins, Employer Representative, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as full-time call center representative for First Advantage Membership Services from March 17, 2008 to April 9, 2009. On April 3, 2009, the claimant's team was experiencing problems amongst each other with people talking behind each other's back and he-said she-said situations. The claimant approached Call Center Manager Michelle Basile with her supervisor Keith Frances right behind her. Mr. Frances wanted all three to hold a meeting about their team and Ms. Basile met with the entire team later and told them there would be no more talking behind each other's back, that she was going to meet with them individually and then would meet with the team as a whole after that. Ms. Basile first met with the claimant and she was very frustrated because she felt Mr. Frances was talking about her and other associates behind their backs inappropriately. After their meeting Ms. Basile sent the claimant back to her desk. Ms. Basile was on her way to talk to another associate when she was approached by team member Tammy who was very upset and frightened and said she needed to talk to Ms. Basile right away. They went into the conference room and Tammy said the claimant threatened her. After the claimant met with Ms. Basile she returned to her work area and asked Tammy, who was on the phone, why she was lying about her. Tammy replied that she was not lying and that she was on the phone. There was some verbal back and forth

before Tammy stood up and said, "Shut up. I'm on the phone." The claimant stated, "Sit your fat ass down or I'll slap you." The claimant then said something about waiting for Tammy in the parking lot at 4:00 p.m. and Tammy said she would have the police in the parking lot and the claimant said, "You'll need the fucking cops." Ms. Basile told Tammy she could go home and walked her out the door. She then called the claimant into the conference room with a witness and asked her if she threatened Tammy. The claimant said she "just asked her why she lied about her" and Ms. Basile reminded her she was told the team had been instructed not to talk to anyone. The claimant denied telling her to sit her "fat ass" down or she would slap her and saying she would meet her in the parking lot at 4:00 p.m. Ms. Basile stated that until the situation was worked out the claimant would have to go home and the claimant ran out of the room before Ms. Basile could stop her and finish talking to her. During this time Ms. Basile had been in touch with Human Resources Director Chad Bennett in California. Mr. Bennett flew to Iowa April 7, 2009, to conduct interviews with team members who overheard the conversation between the claimant and Tammy. They corroborated Tammy's account of what happened. Mr. Bennett interviewed the claimant April 8, 2009. After considering all of the interviews and information the employer terminated the claimant's employment for threatening another employee.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant denies saying anything to Tammy besides asking her why she lied about her, the claimant's colleagues, whom she described as not liking Tammy, corroborated Tammy's account of what happened. Although Tammy may have been offensive to work with, especially if the comment she made during the presidential campaign was true, that did not give the claimant the right to threaten her. The employer had ample evidence to terminate the claimant's employment even without prior warnings due to the serious nature of this offense. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The May 21, 2009, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs