

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THERESA A GREGORY
Claimant

APPEAL NO. 10A-UI-03188-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CDL GLOBAL INC
Employer

OC: 02/07/10
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 26, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 13, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Linda Burns participated in the hearing on behalf of the employer with witnesses, Michelle Baumgardner and Paula Brunett. Exhibits 1-3 were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full time for the employer as a customer service representative from May 5, 2008, to February 3, 2010. On November 2, 2009, the claimant was warned that her job was in serious jeopardy after she had falsely reported on several occasions October 2009 that customers had rejected magazine offers when she had never made the offers to the customers.

On February 2, 2010, the claimant was having difficulty keeping up with the incoming calls while completing the documentation for completed calls. She had the ability to place her phone in wrap-up mode to prevent calls from coming through but since employees were evaluated based on the amount of wrap-up time they had, the claimant adopted a practice of taking calls and disconnecting the caller without speaking to the customer. She did this 29 times during her shift on February 2. The claimant had to have known the customer was dropped from the line when she disconnected the call. The employer discovered what the claimant was doing when a customer complained about being disconnected. A review of call records show 29 calls of a few seconds followed by a disconnect by the claimant.

On February 5, 2010, the claimant was discharged for disconnecting calls from customers.

The claimant filed for and received a total of \$1,705.00 in unemployment insurance benefits for the weeks between February 7 and April 24, 2010.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case. The claimant's testimony that she did not know she was disconnecting customer calls is not believable.

The unemployment insurance law requires benefits to 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. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal 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 ineligible for those benefits. The matter of deciding 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 unemployment insurance decision dated February 26, 2010, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid

wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding 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.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs