

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

ASHLEY MOORE
1916 GLENWOOD DR
MOLINE IL 61265

APAC CUSTOMER SERVICES INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-04435-RT
OC: 03-20-05 R: 04
Claimant: Appellant (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 for Misconduct

STATEMENT OF THE CASE:

The claimant, Ashley Moore, filed a timely appeal from an unemployment insurance decision dated April 22, 2005, reference 02, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on May 17, 2005, with the claimant participating. Turkessa Hill, Human Resources Coordinator, participated in the hearing for the employer, APAC Customer Services, Inc. This matter was consolidated with appeal number 05A-UI-04436-RT for the purposes of the hearing with the consent of the parties. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a part-time telephone sales representative (TSR) from February 16, 2004 until she was discharged on March 17, 2005. The claimant was discharged for being rude to customers and hanging up on customers in violation of the employer's policies. The employer has policies prohibiting improper telephone behavior to customers including being rude and also prohibits hanging up on customers. Courtesy to customers is very important to the employer who is involved in telephone sales marketing. The claimant received copies of these policies and signed an acknowledgement therefore and was aware of the policies. The employer monitors telephone calls of its employees including tape-recording them for quality control.

On March 14, 2005, the claimant took a call from an elderly customer. The elderly customer did not understand the claimant. At first the claimant was not paying attention. The customer was confused and did not even know what credit card the claimant was referring to. At that point the claimant became rude and began talking over the customer, meaning that the claimant was talking at the same time the customer was when the claimant should have been listening to what the customer was saying. At one point the customer became so frustrated that she did not understand what the claimant was saying or doing but she started laughing and at that point the claimant hung up on the customer.

The telephone call on March 14, 2005, occurred less than a month after the claimant had received a first and final written warning for hanging up on a customer and talking over the customer. The claimant conceded that she had hung up on the customer and talked over the customer. At that time the claimant was told that further violations of the employer's policies concerning rudeness to customers could result in her discharge. The claimant then participated in the telephone conversation on March 14, 2005 and was discharged. The claimant received no other warnings or disciplines and there was no other reason for the claimant's discharge.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The parties agree, and the administrative law judge concludes, that the claimant was discharged on March 17, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to her discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer's witness, Turkessa Hill, Human Resources Coordinator, testified credibly and after reviewing a tape recording of the telephone call, that the claimant was rude to an elderly customer on March 14, 2005 including talking over the customer, meaning that the claimant was talking while the customer was talking and the claimant should have been listening, and hanging up on the customer. The claimant denied that she was rude to the customer or that she inappropriately hung up on the customer. However, the claimant's denial is not credible because she testified directly and unequivocally that the customer was not confused but the testimony of Ms. Hill is convincing and clear that the customer was confused about what was going on and the claimant did not make the effort or take the time to explain to the customer what was going on. This call occurred less than one month after the claimant was given a first and final warning for talking over a customer and hanging up on a customer and the claimant seems to concede that on that occasion she did both. At that time the claimant was told that further violations could result in her termination.

The employer is involved in telephone sales marketing and courtesy to its customers is very important. The employer has policies, copies of which the claimant received and for which she signed an acknowledgement and of which she was aware, prohibiting improper behavior to customers and also prohibiting hanging up on customers.

Because of the employer's policies of which the claimant was aware and because the claimant had received a first and final written warning less than a month before the telephone call on March 14, 2005 that gave rise to her discharge, the administrative law judge is constrained to

conclude that the claimant's behavior were deliberate acts or omissions constituting a material breach of her duties and obligations arising out of her worker's contract of employment and evince a willful or wanton disregard of the employer's interests and are, at the very least, carelessness or negligence in such a degree of recurrence all as to establish disqualifying misconduct. What occurred here was far more than ordinary negligence in an isolated instance or a good faith error in judgment or discretion. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

DECISION:

The representative's decision of April 22, 2005, reference 02, is affirmed. The claimant, Ashley Moore, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she was discharged for disqualifying misconduct.

pjs/pjs