

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN L ELLISON
Claimant

APPEAL NO: 06A-UI-09049-JTT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

**APAC CUSTOMER SERVICES OF IOWA
LLC**
Employer

**OC: 08/13/06 R: 04
Claimant: Respondent (2)**

Iowa Code section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

APAC Customer Services filed a timely appeal from the August 29, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 25, 2006. Claimant Karen Ellison participated. Team Lead Donna Guthrie represented the employer. The record was left open until the end of September 25 for submission, by either or both parties, of a written reprimand issued June 28, 2006. The employer submitted a copy of the prior reprimand, which was received as Exhibit One. The claimant did not submit a copy of the prior reprimand.

ISSUE:

Whether the claimant was discharged for misconduct that disqualifies her for unemployment insurance benefits. She was.

Whether the claimant's conduct in avoiding calls routed to her constituted misconduct. It did.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Karen Ellison was employed by APAC Customer Services as a full-time Customer Service Representative from September 23, 2005 until August 7, 2006, when Operations Manager Lorie Caldwell discharged her. Team Lead Donna Guthrie was Ms. Ellison's immediate supervisor. Ms. Ellison's duties involved assisting customers over the telephone with matters pertaining to the Medicare prescription plan. Ms. Ellison was expected to handle the telephone calls routed to her and would handle an average of 70-80 calls per day.

The final incident that prompted the discharge came to the attention of the employer on August 7, 2006. A week prior, the employer had begun computer monitoring of Ms. Ellison's handling of telephone calls from customers. The employer had commenced the monitoring after it observed that Ms. Ellison was handling a high number of calls but only spending an average of one minute on each call. The employer expected calls to take an average of six to seven minutes. The employer collected the monitoring data on August 7 and Team Lead Donna Guthrie presented the data to Operations Manager Lorie Caldwell. The data indicated that

Ms. Ellison had “handled” 243 calls during the week and had transferred 98 of those calls. By transferring the calls, Ms. Ellison avoided assisting those customers. Ms. Caldwell and Ms. Guthrie summoned Ms. Ellison to a conference, at which time Ms. Caldwell asked for an explanation of Ms. Ellison’s conduct. Ms. Ellison admitted to transferring a high number of the calls, but provided no explanation. Ms. Ellison acknowledged that she knew the conduct was in violation of the employer established work rules. Ms. Ellison knew that the employer was likely losing revenue through her behavior.

On June 28, the employer had formally reprimanded Ms. Ellison for similar conduct. At that time, the employer warned Ms. Ellison that she was to “answer all calls and service each customer” and further warned that future similar conduct would result in immediate discharge from the employment.

Based on the two periods of similar work avoidance behavior, the employer discharged Ms. Ellison from the employment.

Ms. Ellison established a claim for benefits that was effective August 13, 2006 and has received benefits.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Ellison was discharged for misconduct in connection with the employment. It does.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8).

The evidence indicates that Ms. Ellison engaged in a pattern of intentional work avoidance. During the most recent week during which the employer documented Ms. Ellison's conduct, Ms. Ellison redirected 98 of 243 calls routed to her. That amounted to 40 percent of the calls routed to her. The evidence indicates that Ms. Ellison knew the conduct was contrary to the work rules and against the interest of the employer. Ms. Ellison's conduct in avoiding calls routed to her constituted a willful and wanton violation of the employer's interests. Ms. Ellison's conduct also constituted recurrent negligence that demonstrated intentional violation of the standards of conduct the employer reasonably expected from its employees.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Ellison was discharged for misconduct. Accordingly, Ms. Ellison is disqualified for benefits until 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 employer's account shall not be charged for benefits paid to Ms. Ellison.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because Ms. Ellison received benefits for which she has been deemed ineligible, those benefits constitute an overpayment that Ms. Ellison must repay to Iowa Workforce Development. Ms. Ellison is overpaid \$1,038.00.

DECISION:

The Agency representative's August 29, 2006, reference 01, decision is reversed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account will not be charged. The claimant is overpaid \$1,038.00.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs/pjs