

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VONDA HILLIARD

Claimant

APPEAL NO: 11A-UI-05800-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION

Employer

OC: 04/03/11

Claimant: Respondent (2/R)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Qwest Corporation (employer) appealed an unemployment insurance decision dated April 22, 2010, reference 01, which held that Vonda Hilliard (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 22, 2011. The claimant participated in the hearing. The employer participated through Tonya Windschitl and Derek Memmott and Larry Lampel, Employer Representative. Employer's Exhibit One was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time customer sales and service associate from September 25, 2006 through April 1, 2011. She was discharged for gross customer abuse and violating the employer's code of conduct. The claimant knew violation of the code of conduct could lead to termination. She was abusive to two customers on March 29, 2011 while talking on the telephone. The claimant had been a manager at one point so she did know what acceptable behavior was.

When the employer played the recorded calls and questioned the claimant about them, she denied that she abused two customers and claimed that she was the one abused. The calls were played during the hearing. With both calls, there were repeated and painfully long periods of silence which required the customers to ask the claimant if she was still on the line. The first call was from a frustrated gentleman who had called in repeatedly but continued getting billed for two DSL accounts. He had been a loyal customer since 1998. The claimant's voice appeared somewhat antagonistic when she said she did not understand the situation since the accounts were set up on two different dates. The customer raised his voice in response and

said he “never ever, ever had that number.” The claimant continued talking and did not appear to hear what he said so he repeated it, “I’ve never ever, ever had that number. Now it was a mix-up on your end and I expect you to fix it, I don’t care what the details are. And I’m sick of calling every month and getting the same fucking treatment!” The claimant immediately responded, “Well, first of all you don’t have to fucking cuss at me!”

During the hearing the claimant was asked if she said the things the employer testified she said and she responded, “I did not cuss at the customer.” When she was asked by the employer’s representative whether she ever used profanity with a customer, she said, “I restated on that, the first call, the words that he gave to me, yes I did.....I did not attack him with the word. I just restated to him what he stated to me.” The administrative law judge told the witnesses they could not both speak at the same time so the representative again asked if she used profanity towards the customer and the claimant said no.

The customer asked for the claimant’s supervisor and she said he could talk to a supervisor but if he cussed at the supervisor, she would tell him the same thing. The call was not transferred to the supervisor. The claimant continued and said in a raised voice, “Well, that’s fine! But I’m not going to take you talking to me like that. It’s not my problem or” They were both talking at that point and neither one could be understood. The customer said, “Well then you need to learn how to fix things!” The claimant scolded, “Well then you say fix, you don’t have to say fucking, got it?”

The customer said, “I don’t have time to deal with these people” and the claimant raised her voice to talk over him and said, “I apologize for that, but you don’t have to cuss at me! I don’t have to take that abuse. You want it fixed, you have to be nice about it, you don’t have to cuss at me. I don’t have to take that abuse!” The customer said, “Now I been nice about it about ten times” and the claimant interrupted and said, “Well, then you have to be nice again because I’m not going to fix it if you’re going to cuss at me!” The customer again asked for the claimant’s supervisor and she said, “Not a problem” but did not transfer him. The customer eventually hung up and discontinued service with the employer.

The second phone call involved a woman who indicated she only had a few minutes and hoped that the claimant had her account pulled up. The claimant said, “No ma’am” but said nothing more. The customer then asked the claimant if she needed to pull up her account and the claimant said, “Yes ma’am” but again asked nothing more. The customer said, “Well?” The claimant again said, “Yes ma’am” but nothing else. Finally the customer asked the claimant if she was going to participate because she only had a few minutes and she needed to know what was going on. The claimant merely said, “Yes ma’am, you asked if I needed to pull up your account and I said, “Yes ma’am”. The customer made a further comment and the claimant again said, “Yes ma’am”.

Finally the customer offered her account number and then the claimant asked for the billing address. The customer asked, “What is your name sir” and the claimant said, “I’m a ma’am and my name is Vonda.” The customer explained that she wanted this supposed free service, which was not free, taken off her bill. The customer asked that it be taken care of and wanted the claimant to call her back but the claimant told her that she would have to call back when she had time so the customer told her to take care of it then. The customer had to ask the claimant if she was there two times and then asked the claimant if she knew that she was not providing good customer service. The claimant replied, “You asked me to take care of the situation, fine I’m doing that. Do you want me to conversate (sic) with you, because I can do that as well!” The customer replied but the claimant talked over her and said that the customer said she was on a time crunch so the claimant was trying to take care of her situation.

The customer said something about the claimant being unhappy and the claimant said, "It's not my fault that you are unhappy!" The customer told she claimant she was not talking about herself and the claimant said that she was fine. After more questions as to whether the claimant was still there, the customer said she was going to write her name down and tell someone about her stupid attitude. The claimant said, "I don't have a stupid attitude, you do!"

The claimant filed a claim for unemployment insurance benefits effective April 3, 2011 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on April 1, 2011 for gross customer abuse and violating the code of conduct. During the hearing, she initially denied any

wrongdoing but then after the recorded calls were played, she offered an explanation for her "irritation." The claimant's treatment of the customers was offensive and detrimental to the employer's business. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) 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. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated April 22, 2011, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css