

**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**

**GWENETH A FOULKES  
826 – 30<sup>TH</sup> ST  
ROCK ISLAND IL 61201**

**APAC CUSTOMER SERVICES OF IOWA  
C/o TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0293**

**Appeal Number: 04A-UI-00499-DWT  
OC 12/07/03 R 12  
Claimant: Respondent (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, 4<sup>th</sup> 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 are 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

APAC Customer Services of Iowa LLC (employer) appealed a representative's January 7, 2004 decision (reference 01) that concluded Gweneth A. Foulkes (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 5, 2004. The claimant participated in the hearing with her witness, Cheryl Lopez. Turkessa Hill, the human resource coordinator, appeared on the employer's behalf. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 4, 2002. The claimant worked as a full-time customer service representative. Carmelita Stevens was the claimant's most recent supervisor.

On September 10, 2003, the claimant received a written warning for failing to follow the employer's procedures. Specifically, the claimant had not offered a customer a balance transfer check after she had completed a balance transfer and the customer had at least \$500.00 of available credit. The claimant does not dispute this written warning. The warning informed the claimant that if she had any further infractions she could be discharged.

On November 26, 2003, a customer asked the claimant questions about the balance transfer offer she had received and about the balance transfer checks she had received. The claimant answered the customer's questions and asked the customer a number of times if she could do a balance transfer for the customer. The customer did not want the claimant to do anything because the customer wanted to use the balance transfer checks she had received and send them to her creditors. The customer ended the call after the claimant had answered all her calls. Quality assurance randomly monitored this call and informed the claimant's supervisor.

After Stevens listened to the tape of the call, she talked to the claimant. The claimant acknowledged she had not offered a balance transfer check because she had not made a balance transfer. A supervisor had given the claimant written instructions that she was to offer a balance transfer check after a balance transfer had been completed and the customer had at least \$500.00 of available credit. The employer placed the claimant on a leave so the employer could review the claimant's work performance.

On December 9, 2003, the employer informed the claimant she was discharged because she failed again to offer a customer a balance transfer on a November 26, 2003 call.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in

isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer may have had business reasons for discharging the claimant. The claimant's testimony must be given more weight than the employer's reliance on hearsay information from people who did not testify at the hearing. A preponderance of the facts reveals that the claimant's supervisor told her in September to offer customers a balance transfer check after a balance transfer had been completed. On November 26, the claimant offered to do a balance transfer for a customer, but the customer declined this offer. Instead, the customer wanted to use the balance transfer checks she had received in the mail. Since the claimant did not do a balance transfer, she did not offer the customer a balance transfer check. Under the facts of this case, the claimant did not intentionally or substantially disregard the employer's interests or rules or policies. The claimant did not commit work-connected misconduct. As of December 7, 2003, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's January 7, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of December 7, 2003, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/b