

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAULA M ALLSPACH
Claimant

APPEAL NO. 09A-UI-03816-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLACK HAWK COUNTY
Employer

OC: 02/08/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

Paula Allspach filed a timely appeal from a representative's decision dated March 3, 2009, reference 01, which held her ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 6, 2009. Ms. Allspach participated personally. The employer participated by Mr. Steven Weidner, Attorney at Law and witness, Judy Flores, Administrative Supervisor. Employer's Exhibits One through Five were received into evidence.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant was employed as a civilian dispatcher for Blackhawk County from January 26, 1998 until February 10, 2009 when she was discharged for violation of dispatch policy. Ms. Allspach was employed on a full-time basis and was paid by the hour. Her immediate supervisor was Judy Flores.

The claimant was discharged after review of a dispatch incident that had occurred on January 5, 2009 showed that the claimant had not followed established policies or warnings that had been served upon her in the past.

On January 5, the claimant took a 911 call from a male reporting a traffic accident. The caller requested that an officer be sent so that the accident could be reported. The caller also stated that he wanted an officer to respond as soon as possible as the caller was having a medical issue and needed to transport himself to the hospital. The claimant did not enter a call for service or inform the watch commander. Approximately seven minutes later the same caller initiated another 911 call that was answered by the claimant. At that time the caller indicated that he was taking a narcotic for pain and expressed uncertainty as to whether sufficient

information had been exchanged. The claimant advised the caller that state law does not require police to report as long as information is exchanged and the caller again questioned the claimant regarding the need for police. Ms. Allspach provided inaccurate information regarding the amount of damage necessary for a police report and a call for service again not entered and the watch commander was not notified. Subsequently the same party called back a third time reaching a different dispatcher who correctly dispatched officers.

Under established Blackhawk Consolidated Dispatch Center policies, all requests received by Center dispatchers for response by law enforcement are to be treated as a call for service and put into the CAD system so that the appropriate agency can be dispatched. If a dispatcher receives a call that he or she believes does not warrant a response, a dispatcher is required to contact a watch commander so that the watch commander can make a determination as to whether or not a call for service should be put in. Dispatchers are prohibited at all times from ignoring a request or making a personal decision that a response is not warranted.

In 2003 the claimant had failed to place a call for service on a report of an individual threatening suicide. Based upon the claimant's failure to follow procedure at that time, the claimant was warned and given a 30-day unpaid suspension for violating Dispatch Center rules.

In September 2008 the claimant was issued a second 30-day unpaid suspension for failing to put in a call for service of another individual who was suicidal. The claimant was issued a final warning by the employer and given a final chance to continue in employment under the terms of a last-chance agreement. Under the terms of the last-chance agreement, the claimant was required to fill a vacancy on the second shift where supervision was readily available and was subject to discharge if she again violated a significant rule of the communication Center policies or procedures.

It is the claimant's position that she did attempt to enter a service call on January 5, 2009, after she received the second call from the male reporting a traffic accident and medical condition. Calls for service automatically result in additional computer screens being brought up which confirm to the dispatcher that a CAD call entry has been successfully completed and that a service response by the appropriate responding unit will take place. Dispatchers have an obligation to ensure that service calls have been successfully entered. A request for service is not complete until the dispatcher performs required job duties by verifying that the service request has entered the county's computerized systems. A review of the database used by Ms. Allspach determined that there were no breaks in the sequential numbering, equipment malfunctions or references by the claimant or other dispatchers to indicate that the computer/CAD log entries were not properly responding.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct sufficient to warrant a denial of unemployment insurance benefits. It does.

The evidence in the record establishes that the claimant had been warned and suspended on two previous occasions for failure to follow the reasonable and work-related policies and procedures of the Blackhawk Consolidated Dispatch Center. The claimant was aware that if a request for service was made in a call that she had an obligation to forward the request so that service could be provided by the proper police, fire or other response entities utilizing the Consolidated Dispatch Center. The claimant also knew that she did not have the right or authority as a dispatcher to make an independent determination as to whether or not a response unit should be sent. Dispatchers are specifically required to contact the watch

commander of the agency so that the watch commander can make the determination as to whether a call for service should be put in. Dispatchers are specifically instructed that they do not have the right to ignore a request or to decide that a response is not warranted.

Although the administrative law judge is cognizant that Ms. Allspach maintains that she did initiate a request for service call after the caller had initiated his second call to the Dispatch Center, the administrative law judge concludes that the claimant did not ensure that the service request was entered into the computerized system as required. The evidence in the record establishes that the claimant had an affirmative obligation to view and note the computerized screens that were in place to provide verification that a service request had been forwarded. The evidence in the record establishes that the computerized system was up and working on the day in question and had the claimant been performing her job properly she would have noted that any attempt to provide a service request had not been successfully transmitted and that the claimant had an obligation to resend the request and to ensure a request for service had been initiated.

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.

For the reasons stated herein the administrative law judge finds that the claimant's conduct in failing to ensure that a service request on an emergency call had been successfully made is disqualifying conduct sufficient to warrant a denial of unemployment benefits.

DECISION:

The representative's decision dated March 3, 2009, reference 01, is affirmed. The claimant is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, providing that she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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