

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEPHANIE M KOEHLER**  
Claimant

**APPEAL NO. 13A-UI-07669-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THOMAS L CARDELLA & ASSOCIATES**  
Employer

**OC: 12/16/12  
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Stephanie Koehler, filed an appeal from a decision dated June 26, 2013, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on August 19, 2013. The claimant participated on her own behalf. The employer, Thomas L. Cardella and Associates, Inc. (Cardella), participated by Center Manager Jason Tylee, Quality Assurance Representative Monica Clemens, Senior Vice President of Finance Steve Brown and was represented by TALX in the person of Michelle Hawkins.

**ISSUE:**

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

**FINDINGS OF FACT:**

Stephanie Koehler was employed by Cardella from March 21, 2011 until June 11, 2013 as a full-time customer care agent. On May 30, 2013, she had been counseled by Center Manager Jason Tylee about low production. At that time the claimant expressed her concerns about the program being “legitimate” and said she would do what was required but nothing further because of these reservations.

On June 11, 2013, Ms. Koehler was again called into the manager’s office and told at that time she was being moved to the night shift and her salary reduced. When she expressed concern she was told she could always quit. When she declined to do so she was discharged.

## REASONING AND CONCLUSIONS OF LAW:

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.

The claimant was discharged allegedly for insubordination. The record does not support this contention. She had expressed reservations about the legitimacy of the program which were apparently not addressed. The manager did not counsel her about these issues before announcing she was being moved to another shift and her salary was being cut. The employer did not rebut these assertions by the claimant.

The employer's testimony would lead one to believe she had expressed her refusal to do more than the minimum at the time of the last meeting on June 11, 2013, but this is not the case. There is no evidence of insubordination at the final meeting at which she was discharged. The employer alleged this was the final act of misconduct which precipitated the discharge but the record does not support this.

It was alleged her sales statistics were not adequate but Ms. Koehler maintained it was because she was being moved to other programs throughout this time with different goals. There is no evidence of warnings being given that her job was in jeopardy as a result of any of these concerns.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The administrative law judge does not find the claimant's testimony to be any more or less credible than the employer's. The weight of the evidence being equal it must be concluded the employer did not meet its burden of proof to establish substantial, job related misconduct and disqualification may not be imposed.

**DECISION:**

The representative's decision of June 26, 2013, reference 01, is reversed. Stephanie Koehler is qualified for benefits, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs