

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHELLE L JOHNSON**  
Claimant

**APPEAL NO. 08A-UI-10772-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TM1 STOP LLC**  
Employer

**OC: 09/28/08 R: 03  
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, TM1 Stop, filed an appeal from a decision dated November 12, 2008, reference 03. The decision allowed benefits to the claimant, Michelle Johnson. After due notice was issued, a hearing was held by telephone conference call on December 3, 2008. The claimant provided a telephone number where she could be contacted. That number was dialed at 11:01 a.m. and the only response was a voice mail. A message was left indicating the hearing would proceed without the claimant's participation unless she called the toll-free number prior to the close of the record. By the time the record was closed at 11:12 a.m. the claimant had not responded to the message and did not participate. The employer participated by Director Heather Hoyt and Sales Manager Jim Hunter.

**ISSUE:**

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

**FINDINGS OF FACT:**

Michelle Johnson was employed by TM1 Stop from March 10 until March 31, 2008 as a full-time telephone sales representative. At the end of the first quarter of 2008 the employer's client was unable to fund further calls from the call center until the beginning of the next quarter. Sales Manager Jim Hunter met the claimant in the reception area when she arrived for work on March 31, 2008, and said she would have to stay home for a couple of days. She became very loud and confrontational, telling him it was "fucking bullshit" and that he had no right to send her home because she had a right to work. Mr. Hunter kept assuring her it was only temporary and she would be back to work in a few days but she kept repeating it was "fucking bullshit" and that he had no right to send her home. This all occurred in the reception area in the presence of other people who were filling out applications for employment.

Ms. Johnson received a copy of the employee handbook at the time of hire. One of the policies strictly prohibits the use of obscene, threatening or abusive language or gestures in the workplace. Violation of the policy is grounds for immediate discharge. When the claimant would not leave and continued her tirade, Mr. Hunter discharged.

Michelle Johnson filed a claim for unemployment benefits with an effective date of September 28, 2008. Records of the Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

**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 for obscene and abusive language to a supervisor in a public area of the work place. Her conduct was insubordinate and hostile and created a very bad impression of the business to potential employees. She refused to follow Mr. Hunter's instructions to return home and would not listen to him when he tried to assure her it was only temporary. This is conduct not in the best interests of the employer and the claimant is disqualified.

**DECISION:**

The representative's decision of November 12, 2008, reference 03, is reversed. Michelle Johnson is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css