

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SYNTHIA H SILVARREY**  
Claimant

**APPEAL NO: 10A-UI-07771-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FOCUS SERVICES LLC**  
Employer

**OC: 04/25/10**  
**Claimant: Respondent (2/R)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The employer appealed a representative's May 19, 2010 decision (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non disqualifying reasons. A telephone hearing was held on July 12, 2010. The claimant participated in the hearing. Kelly Hoftender, the staffing 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 reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on January 12, 2009. The claimant worked as a full time agent in customer service. The employer provides training to employees about unethical practices -slamming and cramming techniques. The employer's policy informs employees that if they engage in these unethical practices, they will be discharged.

Prior to March 19, 2010, the claimant's job was not in jeopardy. On March 19, the claimant talked to a customer who was interested in high speed Internet. The employer's client, Qwest, had a promotion for high speed Internet. During the conversation, the claimant failed to let the customer know the high speed Internet promotion price only applied to customers who had Qwest's home phone package and that a two-year service agreement was also required before the customer could obtain the promotional special. The claimant also failed to inform the customer about the non-recurring charges to start the high speed Internet service. The claimant added the home-pack local package and the two-year service agreement without the customer's approval.

On April 21, the March 19 customer complained about unauthorized charges added to the customer's account without the customer's knowledge or approval. The employer reviewed the claimant's March 19 call with this customer and learned what the claimant had done and said

during this transaction. The employer considered the claimant to have violated the employer's anti-slamming and cramming policy. The employer discharged the claimant on April 21, 2010.

The claimant established a claim for benefits during the week of April 25, 2010. She has filed for and received benefits since April 25, 2010.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. 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).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

Since the claimant did not have any problems prior to March 19, does this single incident rise to the level of work-connected misconduct? In this case, yes. Even if claimant accidentally hit a key, she did not tell the customer about the Qwest's Home Phone package, a two-year service agreement and the one-time charges to set up the high speed Internet service. The claimant's failure to inform the customer about these costs constitutes an intentional violation of the employer's policy and a substantial disregard of the employer's interests.

Even though the incident occurred on March 19, the employer did not learn about this transaction until April 21. On April 21, the customer complained about the additional charges on a bill. Since the employer took immediate action after learning about the problems the employer established the claimant was discharged based on a current act of work-connected misconduct. As of April 25, 2010, the claimant is not qualified to receive benefits.

The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment will be remanded to the Claims Section.

**DECISION:**

The representative's May 19, 2010 decision (reference 01) is reversed. The employer discharged the claimant based on a current act of work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 25, 2010. This

disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employers' account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is remanded to the Claims Section to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs