

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAYNARO L PIRTLE
Claimant

APPEAL NO: 11A-UI-05712-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

INFINITY CONTACT INC
Employer

OC: 07/25/10

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Raynaro L. Pirtle (claimant) appealed a representative's April 19, 2011 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Infinity Contact, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 24, 2011. The claimant participated in the hearing. Jennie Wildman appeared on the employer's behalf. During the hearing, Employer's Exhibit One was entered into evidence. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on October 29, 2010. He worked full time as a center representative in the employer's call center. His last day of work was March 28, 2011. The employer discharged him on that date. The reason asserted for the discharge was showing poor judgment in the handling of a call on March 25.

The claimant received a call on March 25 from a customer who was already irritated because of an initial unsuccessful attempt to have her concern addressed through a call to a foreign call center. As the customer explained her prior effort and her problem, the claimant's initial focus was on her prior attempt rather than on her specific problem, and did not initially catch that she was questioning the price she was charged rather than there being a problem with the product. That she had to repeat the underlying problem caused the customer further frustration. When the claimant attempted to explain that the difference in cost was likely the addition of shipping and handling as well as state sales tax and asked what the sales tax was in the customer's state, the customer became more frustrated and combative. In response, the claimant did become somewhat defensive and somewhat raised his voice, but even the employer did not believe he "yelled" at the customer, despite the customer's claim during the call that the

claimant was “yelling” at her. When the customer asked to be transferred to a supervisor, the claimant agreed, but the customer then called the claimant a “f - - - ing idiot,” to which the claimant replied that if the customer was going to be rude he could disconnect. He then transferred her to a supervisor.

Because the employer concluded that the claimant showed poor judgment during the call which reflected poorly on the employer’s customer, the employer determined to discharge the claimant. The claimant had not been subject of any prior concerns or discipline regarding proper handling of a call or any exhibit of poor judgment.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant’s employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is his handling of the call on March 25. Under the circumstances of this case, the claimant’s unsatisfactory handling of the call was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. While the employer may have had a good business reason for discharging the claimant, it has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant’s actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's April 19, 2011 decision (reference 03) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css