

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEANNE DROESSLER

Claimant

APPEAL NO: 16A-UI-10634-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EGS CUSTOMER CARE INC

Employer

OC: 08/21/16

Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 15, 2016, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 27, 2016. The claimant participated in the hearing and was represented by Attorney Arthur Gilloon. Turkessa Newsome, Human Resources Generalist, participated in the hearing on behalf of the employer and was represented by Associate General Counsel Brian McGrath. Claimant's Exhibits A through H were admitted into evidence.

ISSUE:

The issues are whether the claimant's appeal is timely and whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last-known address of record on September 15, 2016. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 25, 2016. That date fell on a Sunday so the appeal was due September 26, 2016. The claimant took her appeal letter in to her local office on September 26, 2016, and it was date stamped (Claimant's Exhibit E). The local office forwarded the appeal to the Appeals Section. Under these circumstances, the administrative law judge concludes the claimant's appeal is timely.

The claimant was employed as a full-time customer service representative for EGS Customer Care from June 11, 2007 to August 19, 2016. She was discharged for violating the employer's call avoidance policy August 10, 2016.

The employer's witness testified that the claimant hung up on two customers August 10, 2016. The claimant was transferring one customer who wished to discontinue service to the retention department and the customer started to say something just before the claimant hit the button to

transfer him and the employer considered that a hang up. There was a second call where the claimant “panicked” and hung up on a customer.

The claimant has narcolepsy and has suffered its effects at work throughout her employment (Claimant’s Exhibits A and B). Her physician has written notes stating she should be allowed to get up and walk around for a few minutes when she feels herself getting sleepy. The claimant provided all of her team leads with that or similar notes but toward the end of her employment there were changes to the program being made and the claimant did not know who her new team leader was as of August 10, 2016. The employer had always accommodated the claimant’s medical condition in the past. Her narcolepsy was more pronounced when changes were made to her medications, during high stress situations, and if she failed to get enough sleep.

The claimant stated that on August 10, 2016, she did transfer a customer just as he began asking a question and admitted that she fell asleep on another call and awoke to the customer yelling at her that it sounded like she was “half asleep” and asking for a supervisor. The claimant testified she “panicked” and hung up on the customer.

Customer service representatives are monitored by the employer two times per week and are audited if there appears to be an issue with the employee’s handling of calls. The employer attempted to monitor the claimant August 10, 2016, and observed the claimant had transferred calls inappropriately which resulted in an audit of her calls and led to the employer discovering the hang up. Under the employer’s policy, if an employee disconnects a call, it may result in disciplinary action up to and including termination (Claimant’s Exhibit G).

The employer met with the claimant August 10, 2016, and placed her on an investigatory suspension. On August 19, 2016, the employer notified the claimant her employment was terminated.

The claimant received a final written warning July 7, 2016, for an inappropriate transfer of a call. She had not received any other warnings for call avoidance or dropping calls prior to the final written warning.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

While the claimant did click the button to transfer a customer just as he started to say something August 10, 2016, her actions were not intentional call avoidance as asserted by the employer. Rather, she simply could not stop the action in time to catch the customer's question. The claimant admits she did hang up on another customer after her narcolepsy caused her to fall asleep for approximately one minute during a call and she awoke to the customer yelling at her and stating she wanted to speak to a supervisor which caused the claimant to "panic" and hang up. Obviously the claimant should not have hung up on the customer. Her narcolepsy caused her to fall asleep but it is less clear that her narcolepsy caused her to hang up on the customer. Regardless of whether the hang up was due to narcolepsy or not, that call was an isolated incident of poor judgment on the part of the claimant.

The claimant provided the employer with documentation of her medical condition and kept her team leaders informed of the situation and that she needed to be able to get up and walk around a bit when she felt herself getting drowsy or an episode of restless legs about to occur. Because there were changes taking place with the account she was working on, however, she did not know who her team leader was on August 10, 2016.

Despite the fact the employer was aware of the claimant's medical condition, it apparently did not take that into account when making the decision to terminate her employment. Because the hang up on August 10, 2016, was an isolated incident of poor judgment at worst, the administrative law judge must conclude the claimant's actions do not rise to the level of intentional, disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The September 15, 2016, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/rvs