

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURA R SCHWENNEHER
Claimant

APPEAL NO. 11A-UI-00704-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES OF IOWA
Employer

OC: 10/24/10
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's January 18, 2011 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. The claimant participated in the hearing. Turkessa Hill, a human resource generalist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in January 2008. The claimant worked as a full-time customer service representative. Prior to September 29, 2010, the claimant's job was not in jeopardy and she had not received any written warnings for being rude or discourteous to customers.

On September 29, 2010, a client monitored the claimant's call. The client reported the claimant had not been courteous to the customer the client had monitored. As a result of the client's complaint, the employer gave the claimant a final written warning on September 29, 2010 for being discourteous on the phone to a customer. The warning indicated that further problems could result in her termination.

On October 5, 2010, the client again monitored the claimant's calls. The client concluded the claimant's tone of voice while talking to a customer had been rude. The client reported this call to the employer. Two quality assurance supervisors reviewed this call and also concluded the claimant had been rude to the caller.

The claimant does not remember much about the call at issue. But she remembered the caller was difficult and the tone of her voice may have been perceived as being rude to the caller. The claimant acknowledged she had a "bad" day and the tone of her voice was not as courteous as the employer expected. The employer discharged the claimant on October 6, 2010, for being rude and discourteous to a customer.

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 § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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 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).

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).

The employer established justifiable business reasons for discharging the claimant, especially after a client complained about the way she talked to customers on September 29 and October 5, 2010. Without knowing exactly what the claimant said or why the employer or quality assurance representatives concluded she had been rude and discourteous, the evidence does not establish that the claimant intentionally disregarded the employer's interests. The claimant may have had a "bad" day, but general conclusions that she was rude and disrespectful does not establish that she committed work-connected misconduct. Therefore, as of October 24, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's January 18, 2011 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the evidence does not establish that the claimant committed work-connected misconduct. As of October 24, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw