

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEPHEN LONG**

Claimant

**APPEAL NO: 100-UI-13443-E**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QWEST CORPORATION**

Employer

**OC: 05-30-10**

**Claimant: Appellant (1/R)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the June 28, 2010, reference 01, decision that denied benefits. Administrative Law Judge Marlon Mormann conducted an initial hearing on this matter in appeal number 10A-EUCU-09331-M and the employer did not participate. Benefits were allowed and the employer appealed the decision indicating it did not participate due to lack of notice. The Employment Appeal Board remanded for a new hearing in an order dated September 24, 2010. After due notice was issued, a hearing began December 1, 2010, in Des Moines, Iowa, before Administrative Law Judge Julie Elder. The hearing was completed by telephone conference call on December 17, 2010. The claimant participated in the hearing with Union Steward Laurie Soroko. Lucy Davis, Super Network Operations and John O’Fallon, Employer Representative, participated in the hearing on behalf of the employer on December 1, 2010. The claimant was reinstated to his previous position December 9, 2010, as a result of arbitration and the employer did not participate in the conclusion of the hearing held on December 17, 2010.

**ISSUE:**

The issue is 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: The claimant was employed as a full-time screening consultant for Qwest Corporation from June 26, 1996 to June 2, 2010. He was discharged for repeated unprofessional conduct. The claimant received a first step warning or a documented discussion June 11, 2009, for making an offensive comment to a co-worker. There were two complaints about the claimant from outside technicians on approximately August 4, 2009. The employer bypassed a formal written warning and went directly to a warning of dismissal for gross customer abuse. He was on the phone with an alternate provider customer and he wanted to talk to the other technician’s supervisor to complain about the technician’s treatment of him. The customer asked for the claimant’s supervisor so he asked for theirs. An investigation was conducted regarding the claimant January 29, 2010, regarding two separate issues, a customer complaint and a manager’s

observations. The customer complained the claimant was condescending and unprofessional; he interrupted the customer and cut him off and then told the customer his question required a yes or no answer. The customer said the claimant's tone and behavior were "appalling." The employer did not provide any further information on the manager's observations except that the claimant's calls were monitored and he needed help with everything, from restraining himself to annoying the customer. The employer issued a second warning of dismissal February 5, 2010, as a result of the investigation. The claimant was counseled March 18, 2010, as a supervisor sat next to him while he made a call March 18, 2010. The claimant had poor tone on the call so they went off the floor to discuss it. The claimant said he agreed that the customer felt like he was bothering the claimant. There was a quality study complaint April 21, 2010, after the claimant was rated poor because the customer did not appreciate not being listened to so the employer provided additional feedback. The quality assurance team reported the claimant was rude and condescending on a call they observed on that same date so more discussions were held. Another quality assurance study was performed on the claimant's calls May 6, 2010, and the claimant was rated poor on his customer service. Further counseling was provided. The final incident occurred May 22, 2010, when customer Anna Perryman complained to the employer that she had the worst experience anyone could have after she spoke with the claimant on the phone. The claimant first hung up on Ms. Perryman, saying he thought she had the wrong department. When she called back and the claimant found the right department, the technician said he could not help Ms. Perryman and the claimant "snickered" at her. The claimant admitted he laughed at Ms. Perryman and acknowledged she heard it. Ms. Perryman said the claimant was condescending to her and to the Direct TV representative. She said he patronized her and acted as if she did not know what she was talking about. Ms. Perryman thought the claimant was highly unprofessional and she was not happy with his attitude toward Qwest and Direct TV. Her voice mail complaint came in two parts because it was so long. The employer investigated the matter and asked the claimant if he may have cut off the customer, he said he may have a few times. The employer listened to the call and the claimant did cut her off and was condescending. His conduct was in violation of the letter of dismissal and the employer's code of conduct, and his employment was terminated June 2, 2010.

The claimant filed a claim for unemployment insurance benefits effective May 30, 2010, and has received benefits after the separation from employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for job-related misconduct.

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.

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 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 claimant was discharged June 2, 2010, for repeated incidents of unprofessional and offensive conduct toward customers. He had received two warnings of dismissal and had been coached repeatedly but it did not eliminate his condescension when talking to a customer May 22, 2010. The claimant may have thought it insignificant to laugh at the customer but the customer considered it one of the worst experiences anyone could have. The customer's perception is what matters in this case. The claimant's repeated offensive and unprofessional conduct shows a willful disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Consequently, the administrative law judge must conclude that misconduct as defined by Iowa law has been established. Therefore, benefits must be denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

**DECISION:**

The June 28, 2010, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs