

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RHONDA TONCAR**  
Claimant

**APPEAL NO: 13A-UI-02552-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE AMERICAN BOTTLING COMPANY**  
Employer

**OC: 01/20/13  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 20, 2013, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 16, 2013, and continued on May 21, 2013. The claimant participated in the hearing with Attorney Jeffrey Lipman. Michelle Egelston, Human Resources Manager; Kimberly Long, Administrative Services Support Manager; and Kim Ryan, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One through Seven were admitted into evidence.

**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 customer sales representative for The American Bottling Company from January 3, 2000 to January 23, 2013. She was discharged for removing data from the employer's property without permission.

The employer uses call logs containing list of customers to call that day, their order history, call numbers, customer names and contact information, call cycle frequency, the buyers name, information about how the last two invoices were paid in the system and any notes specific to the customer. On January 2, 2013, Human Resources was told the claimant had a copy of a log in her hand in the parking lot. On January 22, 2013, there was another report of the claimant having a copy of a call log in her purse in her desk drawer. On January 23, 2013, a copy of a call log was observed in the claimant's purse as she was preparing to leave for the day.

After the first report on January 2, 2013, the employer changed the color of the log paper from white to yellow. It was trying to be cautious and confirm the logs were being removed from the building. The employer's policy states that employees may come into contact with confidential information and cannot remove documentation without permission.

The employer met with the claimant January 23, 2013, and stated it learned she may have had company documents on her person and after a moment of silence the claimant replied, "No. Not that I know of." The employer said it had signed statements and believed the claimant took call logs home and then the claimant said, "Yes. I guess I do," and removed a copy of the call log for that day from her purse and gave it to the employer. The employer asked her if she understood the seriousness of the removal of the documents and the claimant indicated she did not. The employer did not believe the claimant was sharing the information inappropriately but told the claimant accounts could be jeopardized if the competition had knowledge of the employer's practices and customer accounts. The employer told the claimant her actions were a violation of its Core Business Policies and terminated her employment.

The claimant had watched and signed off on a video stating confidential information cannot leave the building (Employer's Exhibit Seven). The claimant did not seek permission to take the documents home prior to removing them.

The claimant admits to removing copies of the call logs on the days in question because when they were busy she wanted to go over the logs at home at night to make sure her work was correct, especially if she did not have time to double check her work during the day. If she found an incorrect or missing entry she planned to make the corrections on the original logs turned in to her supervisor the day before on the following morning and throw her copies away. She never threw the documents away at home but always returned them to the employer's office for disposal. She did not find any errors on her work the few times she took the call logs home. The claimant was not aware the call logs were confidential.

When the claimant first started in the department the call logs came in books. In July 2012 the employer was changing systems and the claimant was allowed to take the books home to organize them into spread sheets instead of books. Her supervisor gave her permission to take the books home so the claimant did not believe she had to ask permission to take the call logs home in January 2013. She never attempted to hide the fact she was taking copies of the call logs home.

#### **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 section 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 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 violated the employer's policy by removing confidential information from the employer's premises, she was not aware copies of the call logs were considered confidential. She took the copies of the call logs home on at least two occasions prior to being confronted by the employer and did not attempt to hide what she was doing but simply wanted to check for any errors she might have made during a busy day. Under these circumstances, the administrative law judge must conclude the claimant's actions were not substantial or intentional job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The February 20, 2013, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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