

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAULA D KONRAD
Claimant

APPEAL NO. 08A-UI-04558-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

**OC: 04/06/08 R: 02
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Qwest Corporation filed an appeal from a representative's decision dated May 1, 2008, reference 01, which held that no disqualification would be imposed regarding Paula Konrad's separation from employment. After due notice was issued, a hearing was held by telephone on June 10, 2008. Ms. Konrad participated personally. The employer participated by Pamela Pope, EEO Representative; Jamie McAllister, Lead Human Resources Generalist; Sandra Thibodeau, Site Director; and Anjuli Kelotra, Attorney at Law. Exhibits One, Two, and Three were admitted on the employer's behalf. The employer was represented by Steve Zaks of Barnett Associates, Inc.

ISSUE:

At issue in this matter is whether Ms. Konrad was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Konrad was employed by Qwest Corporation from June 26, 1995 until April 11, 2008. She was last employed full time as a telesales manager. She was discharged based on an allegation that she violated the employer's ethical standards. Ms. Konrad was required to make a report if anyone working under her was arrested.

In December of 2007, Michael Jensen reported to Ms. Konrad that he had been arrested for operating a motor vehicle while intoxicated. Ms. Konrad contacted the employer's "advice line" the next day and left word of the arrest on the answering machine. This was the first and only occasion on which she had had to make such a report. Nothing more came of the incident until late March when Mr. Jensen had to spend 48 hours in jail as a result of the charge. On April 1, Jamie McAllister questioned Ms. Konrad concerning Mr. Jensen and indicated he had been arrested the night before. Ms. Konrad told her the arrest had occurred in December and that she had reported it at that time.

Ms. Konrad spoke to Pamela Pope concerning Mr. Jensen on April 4. She reiterated that she had reported the arrest in December when it occurred. Ms. Pope spoke to an individual who handles advice line matters who indicated that Ms. Konrad had reported the arrest on April 1. Ms. Konrad made the report on April 1 because there had been a disposition of the December charges. The advice line representative told Ms. Pope that Ms. Konrad said she delayed making a report because she was waiting for a disposition of the charges. The advice line had no record of a call from Ms. Konrad in December.

Because there was no record of Ms. Konrad having reported Mr. Jensen's arrest in December, the employer considered her to have violated its policy requiring a report of any off-duty arrests. Because she continued to maintain during the investigation that she had made the report in December, the employer concluded that she had misrepresented facts during the investigation. Such conduct was considered a violation of the employer's ethical standards. As a result, Ms. Konrad was discharged on April 11, 2008. The above matter was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Konrad was discharged based on allegations that she violated Qwest policies. It was alleged that she failed to timely report that one of her subordinates had been arrested. It was alleged that she waited until April to report an arrest that occurred in December. The employer's only evidence that she failed to make the report is the fact that there was no record of her having called the advice line in December as she maintained. It is within the realm of possibility that the person retrieving messages from the advice line failed to maintain a record of the call. The employer presented only hearsay testimony from the individual who indicated Ms. Konrad told her she delayed making a report because she was waiting for a disposition of the charges against Mr. Jensen. Ms. Konrad was credible in her testimony to the effect that she did, in fact, contact the advice line in December. Any doubt as to whether the call was made in December shall be resolved in Ms. Konrad's favor.

The employer also alleged that Ms. Konrad misrepresented the facts during its investigation by maintaining that she had called the advice line in December. Having found that she did make the call in December, it must be concluded that she did not misrepresent the facts when she continued to maintain this position when questioned by the employer in April. After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has failed to satisfy its burden of proof in this matter. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated May 1, 2008, reference 01, is hereby affirmed. Ms. Konrad was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs