

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERRILL A PEDERSEN
Claimant

APPEAL NO. 07A-UI-02287-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

**OC: 04/02/06 R: 02
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Qwest Corporation (employer) appealed a representative's February 19, 2007 decision (reference 02) that concluded Sherrill A. Pedersen (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 22, 2007. The claimant participated in the hearing. Ed McNulty represented the employer. Greg Duncan, the team leader, and Derek Memmott, a manager, testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

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

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked for the employer from April 25 to October 24, 2005. The employer rehired the claimant on April 26, 2006, under a last chance agreement regarding previous attendance issues. The last-chance agreement indicated the claimant could not have any unexcused absences or tardies for 18 months. The claimant worked as a full-time center sales associate. Memmott supervised the claimant.

On October 26, 2006, the employer gave the claimant a written warning about her failure to maintain the conditions of her last chance agreement. Since the claimant left work due to a medical condition on October 23, the employer did not discharge her for this absence.

On January 5 and 8, the claimant again did not work as scheduled, for medical reasons. The claimant then asserted her October and January absences were the result of a work-related

injury. The employer provided the claimant with the phone number of the employer's workers' compensation insurance representative and gave the claimant permission to file her claim. After the claimant finished talking to the workers' compensation representative on January 10 she was upset. The representative had questioned the claimant as to why she waited until January to file a claim for an injury the claimant asserted occurred in October. The claimant needed to calm down and decided to take another break even though she had taken her morning break before she talked to the workers' compensation representative.

The employer noticed the claimant was not at her desk for 12 minutes after she completed her workers' compensation phone call. Since the claimant took an unauthorized 12-minute break in violation of her "last chance agreement," the employer discharged the claimant.

The claimant reopened her claim for unemployment insurance benefits during the week of January 28, 2007. The claimant filed claims for the weeks ending February 3 through March 17, 2007. The claimant received her maximum weekly benefits amount of \$272.00 for each of these weeks.

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. 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 claimant knew her job was in jeopardy. Although the claimant assumed her job was in jeopardy after she filed a workers' compensation claim, she should have realized her job was in jeopardy if she did not follow the conditions of her last-chance agreement.

Although the claimant asserted she was too upset to do her work after she talked to the workers' compensation representative, the claimant decided on her own accord to take another break even though she had taken her break earlier. Since the claimant realized her job was in jeopardy, her actions in taking an unauthorized cigarette break amounts to an intentional disregard of the employer's interests. The claimant committed work-connected misconduct when she took a second break to smoke a cigarette on January 10, 2007. As of January 28, 2007, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending February 3 through March 17, 2007. The claimant has been overpaid \$1,904.00 in benefits she received for these weeks.

DECISION:

The representative's February 19, 2007 decision (reference 02) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of January 28, 2007. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending February 3 through March 17, 2007. The claimant has been overpaid and must repay a total of \$1,904.00 in benefits she received for these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw