

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HOLLY L WRIGHT**  
Claimant

**APPEAL NO: 13A-UI-02179-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KUM & GO LC**  
Employer

**OC: 07/22/12**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's February 15, 2013 determination (reference 04) that held the claimant qualified to receive benefits and the employer's account subject to charge because she had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Mike Hussman, the district supervisor, and Christopher Fulk, the general manager, appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer in June 2012 as a full-time sales associate. The claimant did not start working at Fulk's store until late October or November 2012. When the employer hired her in June, the claimant received a copy of the employer's handbook. The claimant did not read all policies in the handbook. One policy informed employees they were never allowed to activate pre-paid phone calls over the phone or that pre-paid phone cards could not be sold overnight.

On January 21, 2013, the claimant worked the overnight shift. Around 3:00 a.m. the claimant received a call from an elderly woman who told the claimant she was disabled and in a wheelchair. The customer asked the claimant if she could purchase pre-paid phone cards for her 14 grandchildren and daughter. (Employer Exhibit One) This woman told the claimant another person had done this for her before. The woman also knew about the employer's back-up credit card reader and where it was located. The claimant believed the woman and activated \$2,500.00 of pre-paid phone cards over the phone. The customer described who would pick up the pre-paid cards and he did. The claimant did not realize she had been the victim of a scam.

When Fulk arrived at work, he immediately noticed all the receipts for the pre-paid phone cards and started to deactivate the cards. Fulk was able to deactivate all but \$480.00. When Fulk asked the claimant why she had not called him when she received the call, she responded that she had not thought to do this. The claimant also indicated she did not know about the employer's policy that pre-paid phone cards could not be activated over the phone or at certain times of the night.

Even though the claimant's job was not in jeopardy before January 21, 2013, the employer discharged her on January 23, 2013. The employer discharged the claimant for violating the employer's policy about activating pre-paid phone calls over the phone.

During the week of January 20, 2013, the claimant reopened a claim she had established the week of July 22, 2012. The employer is not one of the claimant's base period employers on this claim.

### **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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established justifiable business reasons for discharging the claimant. The evidence indicates the claimant made a mistake when she believed a scam artist the morning of January 21, 2013. Even though the claimant violated the employer's policy about activating pre-paid phone cards over the phone during an overnight shift, the facts do not establish that she intentionally violated the policy. She sincerely believed the scam artist. This isolated incident does not amount to work-connected misconduct. As of January 20, 2013, the claimant is qualified to receive benefits.

Since the employer is not one of the claimant's base period employers during her current benefit year, the employer's account will not be charged.

**DECISION:**

The representative's February 15, 2013 determination (reference 04) is affirmed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of January 20, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account will not be charged during the claimant's current benefit year.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css