

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ORQUIDEA PEREZ

Claimant

APPEAL NO. 14A-UI-00533-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COGNIZANT TECHNOLOGY SOLUTIONS

Employer

OC: 12/01/13

Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Orquidea Perez, filed an appeal from a decision dated January 9, 2014, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on February 6, 2014. The claimant participated on her own behalf. The employer, Cognizant Technology Solutions (CTS), participated by Senior Account Manager Sheryl Knutson and Team Leader Daler Camargo Dos Santos.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Orquidea Perez was employed by CTS from October 15, 2012 until December 6, 2013 as a full-time senior process executive. She received a verbal warning on June 19, 2013, for poor job performance. A written warning was given July 31, 2013, for unprofessional conduct in the workplace and using profane language. Final written warnings were given on September 20, 2013, for profane language and November 19, 2013, for low customer satisfaction scores. She was advised her job was in jeopardy.

On December 2, 2013, the claimant had gone to a floor team leader, Swatahi, to ask for help. The other worker said she was busy and in a training session. The claimant was not satisfied with the answer but returned to her desk. Team Leader Daler Camargo Dos Santos heard her making muttered comments and distinctly heard the word “fuck!”

The incident was reported to Senior Account Manager Sheryl Knutson and she investigated the matter by interviewing witnesses and reviewing Ms. Perez’s personnel file. Before any final decision was made the claimant was seen receiving a phone call on her personal cell phone on December 4, 2013. Personal cell phones are forbidden in the restricted “ODC” area where the claimant worked and the employer even provided cell phone lockers outside the security doors, but Ms. Perez had hers with her and took a call as she was walking out the door.

On December 6, 2013, the claimant was discharged by Ms. Knutson and Mr. Dos Santos.

REASONING AND CONCLUSIONS OF LAW:

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 claimant had been advised her job was in jeopardy as a result of her poor work performance and unprofessional conduct. In spite of the warnings she again used bad language on December 2, 2013, while working, and then violated the cell phone policy two days later.

The claimant maintained she was being targeted for discharge by the employer because they did not like her. But she was held accountable only for those matters entirely within her control such as using profane language, not completing her work within the required time frame and having her cell phone in a restricted area. The administrative law judge does not consider this to be a conspiracy made up by the employer to discharge her. The employer has the obligation to provide a harassment-free work environment for all employees as well as good customer service. The claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The unemployment insurance decision dated January 9, 2014, reference 01, is affirmed. Orquidea Perez is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs