

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROZLYNN WOODS

Claimant

APPEAL NO. 09A-UI-11361-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION

Employer

OC: 06/28/09

Claimant: Appellant (1)

Section 96.5(2)a – Discharged

STATEMENT OF THE CASE:

The claimant, Rozlynn Woods, filed an appeal from a decision dated August 3, 2009, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 24, 2009. The claimant participated on her own behalf. The employer, Qwest, participated by Telesales Managers Bryan Scott and Milette Shores and was represented by Barnett Associates in the person of Steve Zaks

ISSUE:

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

FINDINGS OF FACT:

Rozlynn Woods was employed by Qwest from December 18, 2006 until July 3, 2009 as a full-time customer service and sales associate. On April 29, 2009, she received a written warning when she had accumulated six unexcused tardies in a rolling 12-month period due to oversleeping. On June 3, 2009, she received a final written warning for tardiness and was notified her job was in jeopardy. On June 16, 2009, she received a written warning for “call avoidance.” This occurs when an employee sets the “close key” which prevents incoming calls. An employee may use the close key only with authorization from a supervisor but otherwise is expected to be receiving calls.

On June 30, 2009, the claimant was four minutes late returning from lunch. That same afternoon she put herself on “close key” and went to the restroom, then out of the building to move her personal vehicle. This was witnessed by Telesales Manager Milette Shores. When Ms. Woods returned Ms. Shores questioned her about where she had been and the claimant only admitted to being in the restroom, when questioned again she still did not admit to being outside the building. When Ms. Shores confronted her with the fact she had been seen moving her vehicle the claimant’s only response was “so you caught me, isn’t that special?”

Ms. Shores discussed the claimant's tardiness and call avoidance with her supervisor Bryan Scott. An investigatory meeting was held with the claimant and a union representative on July 1, 2009, to discuss the tardiness and the call avoidance. A final meeting was held on July 3, 2009, when the claimant was told she was discharged for tardiness and call avoidance.

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 tardiness and call avoidance. In spite of the warning she was late returning to work on June 30, 2009, and also put herself on close key to avoid calls while she ran a personal errands. She did not request permission from her supervisor to put herself on close key and then deliberately misrepresented the reason for being gone from her workstation when questioned. When finally confronted about being seen moving her personal vehicle she was sarcastic to her supervisor.

There is no one particular incident which caused the claimant to be discharged, it was a culmination of prior warnings and on-going disregard for her responsibilities to her employer. She was tardy to work from lunch, avoided calls without permission, went on a personal errand while on close key and then attempted to mislead the supervisor when questioned about it. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of August 3, 2009, reference 01, is affirmed. Rozlynn Woods is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css