

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PAUL SMITH**

Claimant

**APPEAL NO: 12A-UI-03299-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CORINTHIAN SERVICES OF IOWA LLC**

Employer

**OC: 02-12-12**

**Claimant: Respondent (2R)**

Section 96.5-2-a – Discharge/Misconduct

Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 22, 2012, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 17, 2012. The claimant participated in the hearing. Shawn Overton, Manager and Debra Hanna, Controller, participated in the hearing on behalf of the employer. Employer's Exhibits One through Five were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time funeral director for Corinthian Services of Iowa from December 1, 2008 to February 14, 2012. In July 2011 the employer served a woman after the death of her husband. The claimant was not the funeral director until after the services when the original funeral director left his employment with the employer and the claimant was asked to take over as the contact person for the family and to stay in touch with them and make sure their bill was paid. At the middle to end of November 2011 the client's bill had not been paid and the employer was in the process of deciding whether to pursue collection activities. On January 17, 2012, the employer was notified through its attorney that the client was alleging the claimant sent inappropriate text messages of a sexual nature to the client, which made her uncomfortable and she was withholding payment for services provided by the employer. On January 18, 2012, the employer met with the claimant to discuss the allegations and asked if he had any contact through text message with the client and the claimant stated he had and the employer asked the claimant if any were of a personal nature and the claimant stated he could not recall any. The employer did not specifically ask if the claimant had any contact with the client of a sexual nature. At the conclusion of the meeting the employer indicated it was going to proceed with collection of the account. Between February 1 and February 7, 2012, there were further communications between the employer's attorney and the client's attorney about

the allegation of improper sexual remarks and advances. On February 14, 2012, the employer again met with the claimant to advise him of the continuing allegations and asked the claimant if anything had changed since the January 18, 2012, meeting. The claimant said he ran into the client at a local downtown event September 7, 2011, and made a remark she may have found inappropriate. The employer asked the claimant what happened and he stated the client asked him how she looked and he replied she looked good. The client then turned around and bent over and asked how she looked then and the claimant replied, "Fuckable." The employer stated that drastically changed the situation and the claimant's comment was "completely against company policy regarding the level of care and the code of conduct and terminated the claimant's employment immediately. The claimant emailed the president of the company that what he did was "terribly wrong and reflected poorly on the company and was very inappropriate." The Level of Care the employer was referring to included, "Every employee must be committed to providing client families with courteous service at all times. Always be courteous and helpful to our client families and their guests" (Employer's Exhibit One). The relevant Rules of Conduct state, "Employees are expected to conform to high standards of conduct at all times. The conduct of every employee reflects on the integrity of the Company. Violation of the following rules of conduct (although cause is not necessary for discharge) will result in discipline up to and including discharge" (Employer's Exhibit One). Rule Eight says, "Disorderly, indecent, immoral or abusive behavior" (Employer's Exhibit One).

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant admits making the inappropriate and vulgar comment to the client September 7, 2011, he maintains the specific incident he recalls occurred outside of work and therefore should not disqualify him from receiving unemployment insurance benefits. The employer's business is service related and relies on its reputation and word of mouth from satisfied customers. The employer is also working with clients at some of the most, if not the most, vulnerable times of their lives. The Level of Care and Rules of Conduct both state employees must provide courteous service at all times (emphasis added). The Rules of Conduct indicate, "Employees are expected to conform to high standards of conduct at all times (emphasis added). The conduct of every employee reflects on the integrity of the Company." Indecent behavior is listed as one reason that could result in termination. The claimant did not have a non-work-related relationship with the client and his inappropriate and unprofessional statement did not reflect well on the company or the claimant and was cited as a reason by the client for failing to pay her bill. If the claimant had made the comment to a random person, while still inappropriate, it would not have anything to do with the employer. Because, however, he made the statement to a client of the company, it was work-related. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The March 22, 2012, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs