

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

CATHERINE A SCHMIT
137 – 6TH ST
PO BOX 315
HUDSON IA 50643

QWEST CORPORATION
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 04A-UI-08824-CT
OC: 07/18/04 R: 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Qwest Corporation filed an appeal from a representative's decision dated August 11, 2004, reference 01, which held that no disqualification would be imposed regarding Catherine Schmit's separation from employment. After due notice was issued, a hearing was held on September 8, 2004. The hearing was recessed and reconvened on September 13, 2004. Ms. Schmit participated personally and was represented by Marcee Marken of Communications Workers of America Local #7108. Exhibit A was admitted on Ms. Schmit's behalf. The employer participated by Willie Stewart, Customer Service Manager, and was represented by Lucie Hengen of Employers Unity, Inc. Exhibits One through Eleven, excluding Six, were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Schmit was employed by Qwest Corporation from April 21, 1989 until July 19, 2004. She was last employed full time as a customer assistance agent, a position she had held for the last three years of her employment. She was discharged because of customer complaints.

On April 30 and May 1, 2003, Ms. Schmit received customer complaints indicating that she sounded impatient and that she had disconnected from the calls before the customers had concluded their questions. Ms. Schmit believed she had transferred the call from May 1 because there were several pages of listings she would have to go through in order to provide the requested information. On May 6, 2003, she was given a written warning for unsatisfactory customer service and attendance. On September 24, 2003, a customer complained that Ms. Schmit refused to transfer her to a supervisor as requested. Ms. Schmit denied at the time and during the hearing that she had ever refused to transfer a customer to a supervisor if such a transfer was requested. As a result of the complaint, Ms. Schmit received a warning on October 2, 2003. Based on the customer complaints and her attendance, Ms. Schmit was given a warning of dismissal on November 5, 2003.

On March 26, 2004, a customer complained that Ms. Schmit disconnected from the call while the customer still had questions. She indicated in the written response to the complaint that she believed she had provided all of the requested information but acknowledged that she had hit the button releasing the call too fast. As a result of the complaint, Ms. Schmit was suspended for three days. On April 5, 2004, she was reissued a warning of dismissal for unsatisfactory customer service. On May 28, 2004, the warning of dismissal was reissued to include customer service and attendance issues. The decision to discharge was based on a customer complaint from July 12, 2004 wherein the customer complained that the operator was rude and impatient. A trace of the call determined that Ms. Schmit was the operator in question. She was discharged on July 19, 2004.

The parties agree that there are occasions when the system will drop calls without any steps being taken by the operator to disconnect the customer. This is especially true when the call volume is high. Ms. Schmit began keeping a log in October of 2003 of some of the occasions when calls were dropped by the system. She had shared the log with her manager. None of the calls for which she received disciplinary action after October of 2003 were noted on her log as dropped calls. Ms. Schmit handled approximately 1,200 calls per day.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Schmit was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Schmit was discharged because of customer complaints. The administrative law judge believes she took steps to improve her customer service after she received the various warnings outlined herein. Most of the complaints dealt with customers being disconnected before they had concluded their questions. Given the fact that the system will sometimes drop calls, it is impossible to determine which calls were dropped by the system and which ones represented occasions on

which Ms. Schmit hung up too quickly. At most, her conduct represented occasions of negligence.

Negligence constitutes disqualifying misconduct only if it is sufficiently recurrent as to manifest a substantial disregard for the employer's standards. Given the high volume of calls handled by Ms. Schmit on a daily basis, the administrative law judge concludes that her negligence was not so recurrent as to constitute disqualifying misconduct. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, the administrative law judge concludes that the employer has failed to establish that Ms. Schmit was guilty of misconduct within the meaning of the law. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated August 11, 2004, reference 01, is hereby affirmed. Ms. Schmit was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/pjs