

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DAWN E COLBERT**  
Claimant

**CONSUMER SAFETY TECHNOLOGY LLC**  
Employer

**APPEAL NO. 18A-UI-10601-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/23/18**  
**Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated October 12, 2018, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on November 7, 2018. Claimant participated personally. Employer participated by Samantha Stupka, Vernon Paton and Travis Krizer. Employer's Exhibits 1-5 were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on September 20, 2018. Employer discharged claimant on September 20, 2018 because claimant committed multiple acts of call avoidance after being trained not to have call avoidance, after receiving multiple coachings on call avoidance, and receiving a final warning on call avoidance.

Claimant worked in a call center for employer. As a part of her job, claimant was trained not to leave customers on hold for a period of over two minutes without checking back with them. Claimant received multiple coachings for having customers on hold for too long periods of time. On August 31, 2018 claimant received a final warning for avoiding calls and putting customers on hold for extended periods of time. On that warning claimant was alerted that additional infractions could result in actions up to termination.

On September 8, 2018 claimant met with the human resources representative who reiterated claimant's precarious position with employer. Claimant mentioned that she would leave calls in order to use the restroom. Employer asked for medical documentation of this need as claimant hadn't previously mentioned it to supervisors. By the date of claimant's termination, she hadn't provided a doctor's allowance to employer.

On September 20, 2018 employer terminated claimant as claimant was documented with multiple acts of call avoidance after her final warning.

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Henry* supra.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning call avoidance. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant knew that she had ongoing problems concerning call avoidance through her training, multiple coachings, and a final warning. After each of these, claimant had multiple more instances of call avoidance. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated October 12, 2018, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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