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

TIFFANI S MCNEAL
Claimant

EGS CUSTOMER CARE INC
Employer

APPEAL NO. 17A-UI-06683-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/28/17
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

EGS Customer Care (employer) appealed a representative's June 23, 2017, decision (reference 01) that concluded Tiffani McNeal (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 19, 2017. The claimant participated personally. The employer participated by Turkessa Newsone, Human Resources Generalist, and Rita Mae Ricketts, Team Lead. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 29, 2012, as a full-time customer service representative. The claimant signed for receipt of the employer's handbook on October 29, 2017. She did not sign for the employer's 2016 updated handbook. On February 14, 2017, the employer issued the claimant a written warning for attendance.

The employer had discussions and huddles about the correct behavior with customers. The employer told employees never to disconnect customers. In mid-May 2017, a trainer told the claimant and another employer they could disconnect if they had a customer who was irate.

On May 30, 2017, the claimant spoke with an irate customer over the telephone. The customer interrupted the claimant and used profanity. The claimant told the customer that the claimant had to read her a statement verbatim. The customer kept interrupting the claimant. The claimant said, "I'm trying to answer you but you keep interrupting." and "You don't have to get smart with me". The claimant asked the customer not to use profanity. Eventually the claimant said, "Bye" and disconnected. On May 31, 2017, the employer terminated the claimant for using the wrong words and tone with a customer and disconnecting the call.

The claimant filed for unemployment insurance benefits with an effective date of May 28, 2017. The employer participated personally at the fact finding interview on June 22, 2017, by Turkessa Newsone.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the employer had not previously warned the claimant about any of the issues leading to the separation, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. The claimant's actions

only amount to unsatisfactory conduct or a good faith error in judgment or discretion without a previous warning.

If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's June 23, 2017, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs