

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TYLER COURTNEY

Claimant

APPEAL NO. 11A-UI-02572-WT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION

Employer

OC: 4/18/10

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a fact-finding decision dated February 22, 2011, reference 04, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 21, 2011. Claimant participated personally. Employer participated by Shawn Lampel. Employer Exhibit One was 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 as follows. Claimant began working for the employer on August 9, 2010. Claimant was discharged on January 13, 2011 for failing to meet the employer's "minimum expectations." The final incident occurred on January 11, 2011.

The claimant was classified as a consumer sales and service associate (CSSA), a hybrid customer service/sales position. He took inbound calls and provided customer service to customers. His job description was to "transition" customer service calls into sales opportunities. Mr. Courtney was not meeting his sales goals. The employer's practice was to provide extensive training to each CSSA and then monitor the staff through call observations. This essentially meant that Qwest managers would listen in on calls involving staff.

In their termination documentation, Qwest found that Mr. Courtney had not met minimum expectations for "Offer Behaviors." In other words, when a customer called in to have a problem resolved, he failed to offer additional products to the customer. When combined with his previous record of disciplinary action, including failing to make sales goals, previous offer behaviors and attendance issues, the decision was made to terminate.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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.

It is the finding of the undersigned that the facts presented in the matter presents a very close case. The employer certainly has a right to expect that an employee follow its directives. For the following reasons, however, the evidence fails to establish that claimant was discharged for an act of misconduct.

Mr. Courtney began working for Qwest in August 2010. His job was essentially a sales job on inbound calls. It was his responsibility to transition a service call into a sales opportunity. It is the finding of the undersigned that Mr. Courtney was likely not well-suited for this type of work. Some people have a natural aptitude for this type of work and some do not. Mr. Courtney, however, acted in good faith. He was simply not comfortable transitioning certain service calls into a sales pitches and he failed to perform this function of his job at a consistent enough level. The employer had every right to take disciplinary action against Mr. Courtney for this. It does not, however, rise to the level of misconduct under Iowa law.

DECISION:

The fact-finding decision dated February 22, 2011, reference 04, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Joseph L. Walsh
Administrative Law Judge

Decision Dated and Mailed

jlw/pjs