

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

KIM A STRONG  
21787 – 112<sup>TH</sup> AVE  
DELTA IA 52550

FEDERAL BROADCASTING CO  
KTVO TELEVISION  
PO BOX 949  
KIRKSVILLE MO 63501

Appeal Number: 05A-UI-01000-DWT  
OC: 12/26/04 R: 03  
Claimant: Appellant (2)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Kim A. Strong (claimant) appealed a representative's January 20, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of KTVO Television (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 14, 2005. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate in the hearing. As a result, no one represented the employer. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in April 2001. The claimant worked as a full-time commissioned salesperson. Merle Snyder was the claimant's supervisor.

On January 23, 2004, the employer implemented performance plans. The claimant then learned that part of her performance would be evaluated on making 30 direct local calls a week. For the contacts or calls to be valid, certain conditions had to be met. One condition was that the contact had to result in a buy. If the customer did not buy, the contact would not be considered.

The claimant not only made local direct calls, but she also had agency accounts. The agency accounts were the claimant's primary revenue-generating accounts. The agency accounts required the claimant to be in the office varying amounts of time to keep these accounts happy. During the last year of her employment, the claimant's budget or sales goal increased without explanation.

On October 4, 2004, the employer talked to the claimant and told her that her job was in jeopardy because she was not making her weekly 30 direct local calls. The claimant tried to meet her weekly direct local call quota, but was not always successful. In October the claimant paid extra attention to her bigger accounts because these accounts bought annual ads during this time period. In November and part of December, the claimant had not met her budget because some of her sales had not yet gone through. When the sales went through, she met her budget.

The employer discharged the claimant on December 10, 2004. The employer discharged the claimant for failing to make 30 local direct calls each week.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence

or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

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(8).

The employer may have had compelling business reasons for discharging the claimant. The evidence does not, however, establish that the claimant intentionally failed to do her work. Since the employer did not participate in the hearing, it is not known how many daily local calls the claimant made in November or December. The facts presented during the hearing indicate the claimant performed her job to the best of her ability. The evidence does not establish that the claimant committed a current act of work-connected misconduct. Therefore, as of December 26, 2004, the claimant is qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's January 20, 2005 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of December 26, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf