

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRELLANY T CANADY**  
Claimant

**APPEAL NO: 10A-UI-06208-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALORICA**  
Employer

**OC: 03/14/10**  
**Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed a representative's April 13, 2010 decision (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. A telephone hearing was held on June 7, 2010. The claimant participated in the hearing. The employer responded to the hearing notice, but was not available for the hearing. 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 as a full-time telemarketer for the employer on December 29, 2009. The claimant had personal problems which resulted in her being late or absent from work. The claimant understood that if she reported to work late, she could make up the time she had been late or absent from work.

In February 2010, the claimant's supervisor and the manager talked to the claimant about her attendance. After the employer asked the claimant about any personal problems that affected her attendance, the claimant acknowledged she had some personal issues, but thought she had recently resolved them. At the end of the meeting, the employer informed her regarding her continued employment she had one foot in the door and one foot outside the door.

On March 1, 2010, the claimant was scheduled to work at 11:00 a.m. The person she rode to work with had transportation problems and could not give the claimant a ride to work. The claimant contacted the employer and spoke to her supervisor around 10:00 a.m. The claimant asked if there would be any problem with her continued employment if she reported to work at 1:00 p.m. so she could arrange for another ride to work. The claimant's supervisor indicated she no longer had control over the claimant's continued employment and did not know if

management would allow this. The claimant asked her supervisor to find out because she did not want to report to work just to find out she was discharged.

The claimant did not go to work. Her supervisor called just after 1:00 p.m. The claimant then learned that if she had reported to work by 1:00 p.m., she would have had continuing employment. Since the claimant did not report to work, the employer no longer considered her an employee.

#### **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).

The claimant knew her job was in jeopardy because of her attendance when the employer told her she had one foot in the door and one foot outside the door. As a result of realizing her job was in jeopardy, the claimant contacted the employer on March 1 and asked if reporting to work at 1:00 p.m. instead of 11:00 a.m. would lead to her discharge. While the claimant should have reported to work at 1:00 p.m. in an attempt to protect her employment, she reasonably expected her supervisor to contact her before 1:00 p.m. The claimant may have used poor judgment when she did not report to work at 1:00 p.m. even when her supervisor did not get answer her question before 1:00 p.m. Poor judgment does not rise to the level of work-connected misconduct.

Based on the evidence presented during the hearing, the facts do not establish that the claimant intentionally failed to work as scheduled. The employer did not establish that she committed work-connected misconduct. As of March 14, 2010, the claimant is qualified to receive benefits.

The employer is not one of the claimant's base period employers. Therefore, during the claimant's current benefit year, the employer's account will not be charged.

#### **DECISION:**

The representative's April 13, 2010 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of March 14, 2010, the claimant is qualified to receive benefits provided she meets all other

eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css