

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHASITY C STRONG**  
Claimant

**APPEAL NO. 10A-UI-03399-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MARKETLINK INC**  
Employer

**Original Claim: 01/17/10  
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Chasity Strong, filed an appeal from a decision dated February 18, 2010, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 22, 2010. The claimant participated on her own behalf. The employer, Marketlink, participated by Call Center Manager Marissa Mumma.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Chasity Strong was employed by Marketlink from October 20, 2009 until January 13, 2010 as a full-time sales associate. The claimant had complained to Call Center Manager Marissa Mumma about other co-workers harassing her. A round-table meeting was held with the consent of the parties to try and resolve the matter, but the claimant “stormed out” before the meeting could conclude. As a result, all the parties were issued a final written warning that forbade them from having any conversation at all in the work place and during work hours. Discharge would result immediately if the warning were violated.

On January 8, 2010, the claimant and a co-worker, Brittani, apparently had some incident that occurred in the break room. Later, on the calling floor, Brittani made some comment to Ms. Strong. This was witnessed by Ms Mumma. The employer alleged the clamant and Brittani exchanged several comments before they were told to stop. The claimant maintains she only heard Brittani say her name to Ms. Mumma and only said “What?” as she took off her headphones and turned her chair.

Both Brittani and the claimant were suspended pending further investigation. They were interviewed and others present on the call floor were interviewed. The employer concluded the final warning had been violated and discharged both parties.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

The claimant had been advised her job was in jeopardy as a result of if she violated the final warning and exchanged any comments with the other employee. The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). In the present case, the claimant denied she exchanged comments with Brittani and only said "What?" when she heard her name mentioned. The employer disputes this but did not provide any additional evidence in the form of written statements or witness testimony. The administrative law judge does not find the claimant's testimony to be any more or less credible than the employer's, which means Marketlink did not rebut the claimant's denial of wrongdoing with any further evidence or testimony, which means it did not meet its burden of proof. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). Disqualification may not be imposed.

**DECISION:**

The representative's decision of February 18, 2010, reference 01, is reversed. Chasity Strong is qualified for benefits, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw