

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HEATHER A PURSCCELL**  
Claimant

**APPEAL NO. 08A-UI-10559-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CPS SPORTS INC**  
Employer

**OC: 10/12/08 R: 02  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated November 5, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 25, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Laura Dull participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked part time as a sales associate in the employer's sports clothing store from August 22, 2008, to September 26, 2008. The claimant was discharged on September 26 after a customer complained on September 19 that she was on the phone and had not waited on him right away. The claimant called her mother a couple times during her shift because her mother was sick and in the hospital. She did not neglect the customers in the store. She had not been previously warned about her phone use.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such

degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. At most, the evidence shows unsatisfactory job performance.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

**DECISION:**

The unemployment insurance decision dated November 5, 2008, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs