

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KACIE J CAPPS

Claimant

APPEAL NO: 09A-UI-14475-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NATIONWIDE MUTUAL INSURANCE CO

Employer

OC: 08/30/09

Claimant: Respondent (2/R)

Section 96.5-2-a – Discharge

Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Nationwide Mutual Insurance Company (employer) appealed a representative's September 18, 2009 decision (reference 01) that concluded Kacie J. Capps (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 22, 2009. The claimant received the hearing notice and responded by calling the Appeals Section to indicate she would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, the claimant answered, but informed the administrative law judge that she was choosing not to participate in the hearing. Therefore, the claimant did not participate in the hearing. Margaret Barnes of TALX Employer Services appeared on the employer's behalf and presented testimony from one witness, Angela Miner. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 4, 2000. She worked part time (about 20 hours per week) as customer service representative at the employer's Des Moines, Iowa claim call center. Her last day of work was August 31, 2009. The employer discharged her on that date. The stated reason for the discharge was intentional disconnecting/dodging of calls.

On August 30 Ms. Miner, the claimant's supervisor, had been monitoring the claimant on a call about six minutes prior to the end of the claimant's shift when she heard the claimant answer a call from the queue and heard the call disconnect. Because she had overheard in passing a similar instance earlier that day which she had initially simply passed off as an equipment issue, Ms. Miner conducted a system record check. From that report, she saw that the claimant had

taken 25 calls that day which the claimant had manually disconnected after one to eleven seconds, which is only accomplished by physically pushing the release button on the phone. When Ms. Miner went back further in the week, she found that on August 24 the claimant had done this nine times, on August 25 seven times, and on August 26 twenty times.

The employer has a strict policy providing for automatic and immediate discharge of a representative who intentionally disconnects or dodges calls; the employees receive a copy each year and agree to its terms. The claimant most recently agreed to abide by this rule on January 14, 2009. When confronted on August 31, the claimant ultimately admitted that she had intentionally disconnected multiple calls and admitted it had been wrong; she blamed her actions on personal problems she was having. As a result of this conduct, the employer discharged the claimant.

The claimant established a claim for unemployment insurance benefits effective August 30, 2009. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's intentional disconnection of calls, particularly on multiple occasions and on multiple days, knowing it was improper, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits

on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded to the Claims Section.

DECISION:

The representative's September 18, 2009 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of August 30, 2009. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue and whether the claimant is eligible for a waiver of any overpayment.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs