

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

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GOVERNMENT EMPLOYEES INSURANCE
CO
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 04A-UI-10610-SWT
OC: 09/05/04 R: 03
Claimant: Respondent (1)

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 24, 2004, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 21, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Marcy Schneider participated in the hearing on behalf of the employer with witnesses, Jay LaPierre and Terry Vaske. Exhibit One was admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a sales representative from June 10, 2002 to September 7, 2004. The claimant was informed and understood that under the employer's work rules, he was required to treat customers with courtesy, respect, and professionalism. The claimant had received a written warning on February 23, 2004, after a sales call was

monitored and the employer determined that the claimant had been discourteous to a customer on February 19, 2004.

On September 1, 2004, the claimant took a telephone call from a person who was very difficult to understand due to his foreign accent. The customer had difficulty understanding the questions posed by the claimant and the claimant had trouble understanding the answers. To overcome this problem, the claimant attempted to get the necessary information from a relative who was present with the customer, but there was still a language barrier. The claimant treated both individuals respectfully despite the evident frustration by both parties with the communication problems. A supervisor monitoring the call did not believe the claimant's tone of voice was courteous and helpful and warned him about it.

Later on September 1, 2004, the claimant took a telephone call from a contentious caller who when asked for his name told the claimant that he did not want any "bull crap" and did not know why the claimant needed his name to get an insurance quote. The claimant courteously explained that he needed to complete an application over the phone to receive a quote. The caller then volunteered that he had a "fender bender last year." The claimant steered the conversation back to the application questions, and despite repeated challenges to questions and irritated responses from the caller, the claimant completed the questions and provided the customer with a quote. At a point early in the conversation, the customer laughed at not knowing when his insurance was due and the claimant laughed in frustration. Otherwise, the claimant dealt with the customer professionally.

The second call was monitored as well and the claimant's supervisor considered his tone unprofessional and the laughter as mocking the customer. As a result, on September 7, 2004, the employer discharged the claimant for rude treatment of customers.

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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 substantial and 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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. 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 in this case. No willful and substantial misconduct has been proven. The audio recordings of the final two calls did not display any deliberate mistreatment of either customer. The call from Curt Harlen sounded like a crank caller at first, rather than a customer legitimately looking for an insurance quote. The claimant overcame this rough start with a difficult customer, and by the end of the call, the customer answered his questions readily. The claimant may not have handled the calls perfectly, but misconduct has not been proven.

DECISION:

The unemployment insurance decision dated September 24, 2004, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/kjf