

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AURINO C MCKINNEY**

Claimant

**APPEAL NO. 17A-UI-03065-TNT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EGS CUSTOMER CARE INC**

Employer

**OC: 01/29/17**

**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a -- Discharge

**STATEMENT OF THE CASE:**

EGS Customer Care, Inc., the employer, filed a timely appeal from a representative's decision dated March 8, 2017, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on April 12, 2017. The claimant participated. Participating as witnesses for the employer were Ms. Turkessa Newsone, Human Resource Generalist, and Yolanda Reeves, Equifax employee (testifying solely on the employer's participation in fact-finding).

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Aurino McKinney was employed by EGS Customer Care, Inc. from December 21, 2015 until February 1, 2017, when he was discharged from employment. Mr. McKinney was employed as a full-time customer service agent and was paid by the hour. His immediate supervisor was Renee Lucas, Team Leader.

Mr. McKinney was discharged from his employment, EGS Customer Care, Inc. after a caller had complained that Mr. McKinney had been rude and had not addressed her concerns during a call. The claimant's Team Leader, the Company's Operation Manager, and Facility Manager reviewed the call and concluded that Mr. McKinney had not been sufficiently professional and had caused the call to escalate. Mr. McKinney was not informed of the specific nature of the complaint nor given an opportunity to review the call with management prior to his discharge. The claimant was only asked if he had "argued with a customer", and subsequently discharged. Prior to being discharged, the claimant had not been warned or counseled about similar behavior. Company policy provides that employees would be subject to discharge for not following instructions. The employer asserts that Mr. McKinney and other customer service agents have been instructed to be professional and to de-escalate calls.

During the call in question, the caller was upset because a newspaper continued to be delivered to a residence that she had not ordered. Mr. McKinney attempted to explain, to the best of his ability, the circumstances that may have caused her to continue to receive the newspaper and at one point asked the caller not to yell at him. Mr. McKinney made similar statements in his efforts to de-escalate and complete the call on his own. Based upon the prior practices of his team leader, Mr. McKinney did not believe that the call met the criteria for him to alert the team leader or to transfer the call to her.

### **REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence in the record establishes that Mr. McKinney was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Since the claimant was discharged the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v.*

*Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

An employer may discharge an employee for any number of reasons, or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. In the case at hand, the claimant had not been previously warned about any of the issues leading to the job separation and had not been given an opportunity to explain the circumstances surrounding the call to his employer prior to being discharged. The claimant was discharged under the generalized company rule that provides that an employee may be terminated from his or her job if they “fail to follow instructions”.

In this case, Mr. McKinney reasonably believed that he was following the employer’s instructions by attempting to be professional with an angry caller and attempting to de-escalate the caller’s anger while processing the call. Based upon the criteria, as he understood it, Mr. McKinney reasonably believed the call was being handled and that there was no need to inform his team leader or to transfer the call to her.

As the claimant had not been previously warned, he was not given reasonable notice that he must conform to certain expectations could result in his discharge. The evidence in the record does not establish that Mr. McKinney’s unsatisfactory work performance was due to “wrongful intent”. Accordingly, benefits are allowed providing the claimant is otherwise eligible.

**DECISION:**

The representative’s decision dated March 8, 2017, reference 01, is affirmed. The claimant was dismissed from work under non-disqualifying conditions; unemployment insurance benefits are allowed providing the claimant is otherwise eligible.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

scn/scn