

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEANNA HELTSLEY
Claimant

APPEAL NO. 10A-UI-13945-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

OC: 08/08/10
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Qwest, filed an appeal from a decision dated September 28, 2010, reference 02. The decision allowed benefits to the claimant, Deanna Heltsley. After due notice was issued a hearing was held by telephone conference call on November 22, 2010. The claimant participated on her own behalf. The employer participated by Sales Managers Anne Rodriguez and Svetlana Van Wyk, Attorney Cody Greenwaldt and was represented by Barnett Associates in the person of John O'Fallon.

ISSUE:

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

FINDINGS OF FACT:

Deanna Heltsley was employed by Qwest from February 15, 2010 until September 16, 2010 as a full-time sales associate. At the time of hire the claimant attended an orientation and was notified she was responsible for the code of conduct as well as the employer's rules and policies. These are contained on a web site and Ms. Heltsley affirmed she had been provided with this web address and acknowledged she was responsible for the contents.

On August 2, 2010, a co-worker reported to Sales Manager Svetlana Van Wyk she had heard the claimant using her own credit card number to pay for a customer's equipment and then requested a cash or money order be sent to her to cover the cost.

The matter was referred to the employer's corporate investigators and assigned to Cody Greenwaldt. Investigations customarily take 45 days. Before that investigation was concluded Ms. Van Wyk heard the claimant do the same thing on another call August 11, 2010. Ms. Van Wyk listened to that call and the claimant was suspended as a result. She was notified her continued employment was pending the outcome of the investigation.

Mr. Greenwaldt listened to the August 2, 2010, call. During that call the claimant ran four separate social security numbers for a credit check without first determining if the person who

owned the number was over the age of 18, was a resident of the household and had authorized the credit check. Finally she put the account under the name of Ternaster, and then offered to let the customer use the claimant's own credit card number to pay for shipping and handling of the equipment. The account was subsequently rejected by the confirmation team because the social security number and identity of the person could not be verified.

Ms. Heltsley was interviewed by Mr. Greenwaldt on August 26, 2010, and the recording of the call was discussed. He concluded the investigation and was referred to corporate human resources and management for final disposition. It was concluded the claimant had violated rule 106 which prohibits falsification of company documents and notifies employees they are subject to discharge for violation of that rule. Ms. Heltsley was notified of the discharge by Sales Manager Anne Rodriguez.

Deanna Heltsley has received unemployment benefits since filing a claim with an effective date of August 8, 2010.

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 was discharged for violation of company policies and falsification of company documentation. She ran credit checks on social security numbers without verifying the age, identity and residence of the person to whom the social security number was issued. She set

up the account with inaccurate and unverified information, and used a credit card number which was listed as belonging to the customer when it belonged to her. She entered into a private financial transaction with the customer on company time.

The claimant's overall conduct is horrendously unethical and illegal. It jeopardized the employer's business records and code of conduct. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of September 28, 2010, reference 02, is reversed. Deanna Heltsley is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs