

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MEREDITH JAMESON
Claimant

APPEAL NO: 10A-UI-01658-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

NATIONWIDE MUTUAL INSURANCE CO
Employer

OC: 01-03-10
Claimant: Respondent (2R)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 22, 2010, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 10, 2010. The claimant participated in the hearing. Elizabeth Black, Associate Relations Specialist and April Marquardt, Claims Call Center Supervisor participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time claims customer service representative I for Nationwide Mutual Insurance from March 2, 2009 to November 20, 2009. On approximately November 9, 2009, Claims Call Center Supervisor April Marquardt received an e-mail from a quality analyst about a call the claimant received from her boyfriend the quality analyst came across when she was looking for calls to evaluate. There was inappropriate language used between the claimant and her boyfriend and other employees as well as customers could overhear the call. The quality analyst also told Ms. Marquardt there was a possibility the claimant was disconnecting calls and putting some back in the queue. As a result of that e-mail Ms. Marquardt randomly pulled the claimant's calls for the last week of October 2009 and went through and listened to several calls. She found that on October 26, 2009, the claimant disconnected three calls shortly after they began. One was disconnected while the caller was talking and two other calls ended just after the claimant greeted the customer and announced her name. None of the disconnects occurred at a point in the call when the claimant could have been trying to transfer it. Additionally, the claimant put at least two calls back in the queue. Ms. Marquardt is off work Tuesdays and Wednesdays which delayed the process of sending the calls through to the proper authorities. Ms. Marquardt notified the claimant's manager of the situation and then the call recordings were sent to the local human resources department for analysis and disciplinary

decisions November 16, 2009. The claimant testified she may have accidentally hit the drop button or put calls back in the queue if she had to use the restroom but the employer explained that she was not at a point in the call where she would have transferred the call and if the claimant needed to use the restroom or if she did want to take a break she was supposed to use the auxiliary button so she would not get the call rather than taking a call and putting it back in the queue. The employer's policy states, "All associates share the responsibility to take a "zero tolerance" stance on improper customer telephone service. Our policy is to always treat the telephone calls of our customers as a priority, answering all customer calls as promptly as possible and providing the appropriate level of customer support to all callers throughout the entire call. Improperly disconnecting or terminating calls is a violation of our Core Value of being Customer Focused" (Employer's Exhibit One). A violation of the employer's policy could result in termination. After reviewing the claimant's actions and the policy the employer terminated the claimant's employment.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant disconnected three calls and put two more back in the queue on one day in addition to conducting a 16-minute call with her boyfriend where inappropriate language was used and heard by other employees and customers. The claimant had been warned about her attendance and her soft skill customer services scores in the past. The employer's policy states that there is zero tolerance on improper customer telephone service and that all callers should be treated as a priority and that improperly terminating calls is a violation of its Core Value of being Customer Focused (Employer's Exhibit One). The main focus of the claimant's job was customer service. Disconnecting three callers after beginning the calls and putting two others in the queue was unacceptable. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

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 section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The January 22, 2010, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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