

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL L HARDEE
Claimant

APPEAL NO. 09A-UI-11539-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

**Original Claim: 07/05/09
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Qwest Corporation filed an appeal from a representative's decision dated August 7, 2009, reference 02, which held that no disqualification would be imposed regarding Daniel Hardee's separation from employment. After due notice was issued, a hearing was held by telephone on August 26, 2009. Mr. Hardee participated personally and offered additional testimony from Lonnie Soroka. The employer participated by Bryan Scott and Millette Shores, Telesales Managers. The employer was represented by Steve Zaks of Barnett Associates.

ISSUE:

At issue in this matter is whether Mr. Hardee was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Hardee was employed by Qwest from March 1, 2004 until July 1, 2009. He was employed full-time as a sales and service consultant. He was discharged for what the employer felt was gross customer abuse on June 30, 2009.

On June 30, Mr. Hardee was attempting to obtain verification information from a customer and the customer was refusing to provide it. The customer only wanted to be transferred to the repair department. The customer eventually asked to speak to a manager and Mr. Hardee believed he had placed the customer on hold while he transferred him to a manager. Mr. Hardee then stated, "This fucking asshole wants to talk to a manager," which was overheard by the customer. As a result, he was discharged on July 1, 2009. He did not have any history of abusing customers or for using profanity at the workplace. The above matter was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had

the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Hardee was discharged for referring to a customer as a “fucking asshole.” He had a good-faith belief that the customer was on hold and could not hear him. The administrative law judge is satisfied that he did not intend to directly call the customer an inappropriate name.

It is undisputed that Mr. Hardee’s comment was inappropriate and unprofessional in the workplace. However, it appears that coworkers sometimes use profanity when venting frustrations. The conduct of June 30 was an isolated incident of such behavior in his five-year history of employment with Qwest. It is unreasonable to expect employees to be docile and well-mannered at all times. At most, Mr. Hardee used poor judgment in making the statement and in not making sure the customer was on hold before he made it. An isolated instance of poor judgment does not constitute misconduct within the meaning of the law. 871 IAC 24.32(1).

It was well within the employer’s prerogative to discharge Mr. Hardee for his violation of its policy. However, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons cited herein, benefits are allowed.

DECISION:

The representative’s decision dated August 7, 2009, reference 02, is hereby affirmed. Mr. Hardee was discharged, but disqualifying misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw