

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLY A DENNIS
Claimant

APPEAL NO. 09A-UI-15926-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CDS GLOBAL INC
Employer

OC: 07/26/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 14, 2009, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 30, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Linda Burns participated in the hearing on behalf of the employer with witnesses, Peggy Katzenberger, Shannon Parrish, and Stacie Hunt. Exhibits 1 through 5 were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a customer service representative from February 8, 1993, to September 23, 2009. She was informed and understood that under the employer's work rules, unprofessional or improper conduct or language was grounds for disciplinary action. She received warnings for violating these rules on June 4, 2008; January 5, 2009; and March 9, 2009. The March 9 warning was considered a final written warning.

On September 14, the claimant handled a call from a customer. When she could not find the customer's account, she apologized and transferred the call to another employee. That customer complained to the employer on September 18 that the claimant had been rude, and insinuated that the customer was lying about the account. The claimant was not rude and made no accusation that the customer was lying.

The employer discharged the claimant on September 23, 2009, for the pattern of rude conduct toward 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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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 the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The employer has not proven by a preponderance of the evidence that the claimant was rude to the customer on September 14. The claimant testified believably that she was not rude. The employer did not have the customer testify so the employer did not present any firsthand evidence regarding the final conduct that led to the claimant's discharge.

DECISION:

The unemployment insurance decision dated October 14, 2009, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs