

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERINA D SIMPSON
Claimant

APPEAL NO: 14A-UI-10224-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TMONE LLC
Employer

OC: 09/07/14
Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's September 24, 2014 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated at the October 21 hearing. Lindsey Finn, Michael Meyers, the quality assurance manager, and Shawn Ibbotson, a supervisor, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 24, 2012. She worked as a full-time telephone account agent. The employer's rules prohibit employees from using profanity on the call floor. If an employee uses profanity on the call floor, she can be discharged.

Before September 4, the claimant's job was not in jeopardy. On September 4, the claimant was upset after learning the vending services at the employer's facility had incorrectly charged her debit card \$200. After learning about this charge, the claimant looked for the center manager or someone in management to correct this error.

The claimant saw Ibbotson, a manager, and went to him. When he told her that he could not help her, she became more upset because he did not try to help her. The claimant admits she raised her voice when she became more upset. The claimant does not remember saying that the vending services had taken over \$200 of her month and they better get me my f___ money. Ibbotson told the claimant that if she swore again, he would send her home. The claimant responded by saying, "I'm done with this shit." Ibbotson then told the claimant to go home. The claimant then said, "I'm f--- leaving," and walked out.

Ibbotson told the center manager about the confrontation he had with the claimant on the call floor. The center manager made the decision to terminate the claimant because she used profanity on the call floor. The employer informed the claimant on September 5 that she was discharged.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant denied she used profanity on the call floor when she confronted Ibbotson on September 4. Even though the employer did not have a recording of any profanity on September 4, two witnesses, Meyers and Ibbotson, were credible and testified the claimant used profanity when she talked to Ibbotson. A preponderance of the evidence establishes that when the claimant was very upset, she used profanity on the call floor on September 4. While it is understandable why the claimant was upset after learning how much money had been incorrectly charged to her debit card, she had no excuse for swearing in a raised voice while talking to Ibbotson. The claimant knew profanity on the call floor was not tolerated by the employer. The employer discharged her for reasons constituting work-connected misconduct.

DECISION:

The representative's September 24, 2014 determination (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. As of September 7, 2014, the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs