

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TIFFANY A MAHNKE**

Claimant

**APPEAL NO. 06A-UI-09855-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QWEST CORPORATION**

Employer

**OC: 08-27-06 R: 01  
Claimant: Respondent (2)**

Section 96.5(2)(a) – Discharge for Misconduct  
Section 96.3-7 – Overpayment of Benefits

**STATEMENT OF THE CASE:**

Qwest Corporation appealed a representative's September 29, 2006, reference 01, decision that held the claimant eligible to receive unemployment insurance benefits finding that the claimant was dismissed under non-disqualifying conditions. After hearing notices were mailed to the parties a telephone conference hearing was conducted from Des Moines, Iowa on October 23, 2006. The claimant participated and testified. Participating on behalf of the employer was Ms. Marcie Schneider, Hearing Representative. Appearing as a witness was Patty Maltese and Greg Duncan. Exhibits One through Six were received into evidence. Exhibit Seven was withdrawn.

**ISSUES:**

Did the claimant voluntarily quit employment for reasons that qualify her to receive unemployment insurance benefits or did the employer discharge the claimant for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds the following facts: Ms. Mahnke was employed by Qwest Corporation from April 25, 2005 until August 31, 2006, when she was discharged from employment. The claimant held the position of telesales service associate. Ms. Mahnke was employed on a full-time basis and was paid by the hour plus commissions. Her immediate supervisor was Patty Maltese.

A decision was made to terminate the claimant when the employer reasonably concluded that the claimant had included the sale of products or services to clients in some occasions without the client's specific authorization to do so. Based upon a quality control review of a tape during which the claimant had included the sale of a product or service without the client's specific authorization during the call, the company investigated further. On further investigation the employer determined that at least four other customers specifically indicated they had not authorized the claimant to include additional items or services to their accounts. In investigating the matter, Patty Maltese spoke directly with at least four customers who specifically indicated that Ms. Mahnke had not been authorized to add the sale to the client's account.

During the investigation Ms. Mahnke indicated that she believed that a systems failure may have caused some sales to be forwarded that had not been authorized by the clients. The company investigated this possibility and determined through the information technology department that the claimant's explanation was not credible.

Ms. Mahnke was aware that adding sales or products or services without specific authorization of the client was a serious violation of company policy as well as Federal law and could result in her termination from employment. Sales representatives are able to earn a small commission for sales that they are able to make during calls.

It is the claimant's position that the statements of clients contacted by the company should not be considered to be credible as at times buyers have "remorse" after purchasing products or services.

### **REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct in connection with the employment. It does.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

In discharge cases the employer bears the burden of proof in establishing intentional disqualifying misconduct. See Iowa Code section 96.6(2). In this case it is the opinion of the administrative law judge based upon the evidence in the record that the employer has sustained its burden of proof by a preponderance of the evidence in establishing that the claimant violated a known and strictly enforced company policy against placing an order for Qwest products and services on behalf of a customer without the customer's specific authorization. Violation of the policy subjects the employer to potential loss of clients and/or legal sanctions for violation of Federal law.

Here the evidence establishes that Ms. Mahnke was well aware of the employer rule against unauthorized sales and had demonstrated the ability to properly perform her duties for an extended period of time without violating the rule. After being alerted by a quality control monitoring that showed a sale that had not been authorized, the company investigated further. At least four individual clients were contacted and given an opportunity to explain from their perspective what had taken place in calls made by the claimant to attempt a sale of products or services. Each of the four

individuals contacted specifically indicated the claimant had added products to their accounts that they had not authorized in any manner. Based upon the serious nature of the infraction and the five instances of its violation discovered by the employer, a decision was made to terminate Ms. Mahnke from her employment. The employer investigated the claimant's statement that the errors might have been due to systems problems and determined that the claimant's rationale was not reasonable and could not explain the violations discovered by the company.

After carefully weighing this matter the administrative law judge finds that the employer has sustained its burden of proof by a preponderance of the evidence in establishing that the claimant violated the strict company policy. The claimant's conduct, therefore, was in disregard of the employer's interests and standards of behavior and disqualifying under the provisions of the Iowa Employment Security Law.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The administrative law judge concludes that the claimant has been overpaid unemployment insurance benefits in the amount of \$2,082.00 pursuant to Iowa Code section 96.3-7, as the decision that allowed benefits as been reversed.

#### **DECISION:**

The agency representative's decision dated September 29, 2006, reference 01, is reversed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment insurance benefits until she has worked in and has been paid wages for insured work equaling ten times her weekly benefit allowance, provided that she meets all other eligibility requirements. The claimant has been overpaid unemployment insurance benefits in the amount of \$2,082.00

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

pjs/kjw