

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LYNN M KAMM
Claimant

FOCUS SERVICES LLC
Employer

APPEAL 18A-UI-04197-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/25/18
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 30, 2018, (reference 01) unemployment insurance decision that denied benefits based on her discharge for failure to follow instructions in the performance of her work. The parties were properly notified of the hearing. A telephone hearing was held on April 27, 2018. The claimant participated and testified. The employer participated through Hearing Representative Marilyn Schenk and witness Kodi McInerney.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a customer service and sales agent from October 9, 2017, until this employment ended on February 26, 2018, when she was discharged.

The employer provides customer service related services for various clients. One of the employer's clients is Century Link. Century Link has specific standards they require the employer to meet in regards to the number of customer service calls which result in services being disconnected. Specifically, Century Link requires that no more than 13 of every 100 calls be disconnected. In order to reduce the number of disconnects the employer provided a laminated sheet with a call flow that it expected employees to follow. Employees, including claimant, were also asked to sign an agreement in December 2017 stating that they would do what they could to try to prevent a customer from disconnecting services.

McInerney testified claimant struggled with following the call flow for a disconnect customer service call and with keeping her disconnect numbers within the client's requirements. When the call volumes were low and employees had to be sent home, claimant was regularly selected to go due to the high number of her calls that resulted in disconnects. The week of February 19, 2018, claimant averaged approximately 19 disconnects for every 100 calls. Based on these ongoing issues the decision was made to discharge claimant from employment. Prior to her

being discharged claimant was never issued any disciplinary action and was not advised her job was in jeopardy due to her failure to meet the expectations related to disconnect calls.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Claimant was discharged after she failed to meet performance expectations for calls related to customers looking to disconnect services. Prior to being discharged claimant was never issued any disciplinary action, nor was she advised that her job was in jeopardy should she fail to improve. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

DECISION:

The March 30, 2018, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs