

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RONALD A WEST**  
Claimant

**APPEAL NO: 12A-UI-01389-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CALERIS INC**  
Employer

**OC: 01/01/12**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Ronald A. West (claimant) appealed a representative's January 30, 2012 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Caleris, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 29, 2012. The claimant participated in the hearing. Stacy Springer appeared on the employer's behalf and presented testimony from one other witness, Angie Nichol. During the hearing, Employer's Exhibits One, Two, and Three were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Reversed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant started working for the employer on July 21, 2010. He worked full time as telephone service representative providing technical support for various business clients at the employer's Newton, Iowa call center. His last day of work was December 10, 2011. The employer discharged him on that date. The reason asserted for the discharge was deliberate omission of duties and obligations.

The claimant had been placed into a new client system on September 8, 2011. He was released from training on the account on September 17, but quickly began having difficulties with handling the issues to the client's satisfaction. After various informal coachings on issues such as the proper handling of job tickets, on November 15 he was given a "final policy violation notice." (Employer's Exhibit Two.) When there continued to be problems on how he was

handling job tickets, on November 29 he was given an “escalated final policy violation notice.” (Employer’s Exhibit One.)

On December 2 the business client sent the employer an email expressing “concern on Ron’s failure to create Govico tickets . . . [The business client] also expressed their concern with Ron’s failure of enthusiasm and aptitude for the position. The client requested to have Ron removed from their account.” (Employer’s Exhibit Three.) The employer also had concerns regarding continued failure on the part of the claimant after November 29 to use proper punctuation and grammar in his emails and chats. As a result of these concerns after the November 29 warning, the employer discharged the claimant.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant’s employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is “deliberate omission of duties and obligations.” Misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. *Huntoon*, supra. While the employer asserts that the claimant’s failures were “deliberate,” there is no evidence the claimant intentionally failed to perform the new duties in the new account to the best of his abilities; rather, it appears he was ever able to acclimate to the new duties, and simply failed to have the “aptitude for the position.” Under the circumstances of this case, the claimant’s failures were at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and were good faith errors in judgment or discretion. The mere fact that an employee might have various incidents of unsatisfactory job performance does not establish the necessary element of intent. *Huntoon*, supra; *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). While the

employer may have had a good business reason for discharging the claimant, it has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's January 30, 2012 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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