

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

| | |
|--|--|
| 68-0157 (9-06) - 3091078 - EI | |
| KEYANNA N WILLIAMS Claimant | APPEAL NO. 07A-UI-08296-DT |
| ACCESS DIRECT TELEMARKETING INC Employer | ADMINISTRATIVE LAW JUDGE DECISION |
| | OC: 08/05/07 R: 02 Claimant: Respondent (1) |

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Access Direct Telemarketing, Inc. (employer) appealed a representative's August 28, 2007 decision (reference 01) that concluded Keyanna N. Williams (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 13, 2007. The claimant participated in the hearing and presented testimony from two other witnesses, Shawn Williams and Travon Epps. Josh Burrows of TALX Employer Services appeared on the employer's behalf and presented testimony from two witnesses, Jason Eischeid and T.J. Krumm. During the hearing, Employer's Exhibit One was 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?

FINDINGS OF FACT:

The claimant started working for the employer on May 12, 2003. She worked part time (about 16 hours per week) as a telephone sales representative in the employer's Des Moines, Iowa, call center. Her last day of work was August 3, 2007. The employer suspended her that day and discharged her on August 6, 2007. The reason asserted for the discharge was a verbal altercation with another employee.

In the early evening of August 3, while all of the referred to employees were on the call floor, one of the claimant's coworkers, Mr. Epps, asked a question as to whether another coworker, "Kim," had the sales record for a particular area. The claimant responded that another coworker who was no longer employed there would have had the record but for Kim making a complaint about that former coworker. Kim became enraged and began yelling at the claimant. The claimant did not yell back, but stayed at her workstation and did not back down from Kim. Kim continued to yell at the claimant for several minutes. A quality assurance person from the other side of the floor called across the floor for this to stop and finally came across the floor and told Kim to stop.

The team manager who was the acting floor supervisor, Mr. Krumm, had been sitting closer to where the claimant and Kim were seated, but had not initially taken any action. At about the time the quality assurance person came and intervened, Kim yelled a comment to the effect at this was "f - - - ing b - - - s - - -." At that point the claimant raised her voice to call out to Mr. Krumm, saying that since Kim had yelled vulgar language on the call floor she should be immediately discharged under the employer's policies. At about this point another team manager escorted Kim back to the office of Mr. Eischeid, the operations manager; she was then suspended and sent home. The claimant then also went back to Mr. Eischeid's office; from his office he had heard her call out to Mr. Krumm that he needed to discharge Kim. He therefore then also suspended the claimant and sent her home. Both employees were ultimately discharged.

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).

Iowa Code § 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.

The focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is her alleged participating in the yelling incident with Kim and her calling out to Mr. Krumm to discharge Kim. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not established that the claimant was a participant in the yelling as alleged, but rather that the claimant was on the “receiving end.” While at the conclusion the claimant did improperly raise her voice to call out to Mr. Krumm to take disciplinary action against Kim, under the circumstances of this case, the claimant's expression of somewhat understandable frustration at that time was at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, and was a good faith error in judgment or discretion, as compared to intentional or substantial misbehavior. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer 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 August 28, 2007 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css