

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NANCY C HUGLIN**  
Claimant

**APPEAL NO. 08A-UI-06513-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEARS ROEBUCK & COMPANY**  
Employer

**OC: 06/15/08 R: 02**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Nancy C. Huglin (claimant) appealed a representative's July 10, 2008 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Sears Roebuck & Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 30, 2008. The claimant participated in the hearing. Tom Anderson appeared on the employer's behalf. 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:**

After a prior period of employment with the employer through a temporary employment firm, the claimant started working directly for the employer on February 5, 2006. She worked full time as a customer service representative in the employer's Des Moines, Iowa, inbound customer service center. She normally worked 8:00 a.m. to 2:30 p.m. Tuesday through Saturday. Her last day of work was June 13, 2008. The employer discharged her on that date. The reason asserted for the discharge was disconnecting three calls of a second or less duration consecutively in the span of less than a minute after a prior warning.

On May 1 the claimant had been frustrated after a difficult call and had been attempting to take a break. She did not properly hit the "work" button on the phone before hitting the "ID" button on the phone in order to take her phone off line for other calls before logging off, resulting in about nine in-coming calls being disconnected as she as hit the "ID" button. The claimant acknowledged she had been upset and had forgotten to follow proper log out procedure. As a result, on May 7 she received a first and final warning indicating that if this occurred again she was subject to discharge.

The employer asserted that at about 1:15 p.m. on June 6 the claimant had disconnected three calls of one second or less within the span of less than a minute, and concluded that the claimant had again failed to follow proper procedure to log out of her phone. The claimant denied that she had attempted to log out of her phone at that time, and denied there had been any instance in which she intentionally disconnected an incoming call in that time frame. She asserted that if the calls were disconnected, it was either because the caller disconnected the calls or the phone system was malfunctioning.

## **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 that 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 that 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 her asserted disconnection of the three sequential calls on June 6. The mere fact that an employee might have various incidents of unsatisfactory job performance does not establish the necessary element of intent; misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. Huntoon, supra; Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). 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 satisfied its burden to establish by a preponderance of the evidence that the claimant intentionally disconnected or knew or should have known she had disconnected the calls, as compared to the possibility that the calls were disconnected by the callers or by a phone system malfunction. Under the circumstances of this case, the claimant's failure to recognize calls had been disconnected was at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, and was a good-faith error in judgment or discretion. 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 July 10, 2008 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 she 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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