

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**NICOLE M BEYER**  
Claimant

**PREMIERE BUSINESS SOLUTIONS LLC**  
Employer

**APPEAL 14A-UI-13275-LT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/15/13**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 18, 2014, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on February 19, 2015. Claimant participated. Employer did not respond to the hearing notice instruction and did not participate.

**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 telemarketer and was separated from employment on December 8, 2014, when she was discharged. Owner Brent Hood told her she was discharged for alleged insubordination but did not give an example. Not long before claimant asked her supervisor to explain why he was giving her a write up but did not refuse to sign it or say she did not like him. The supervisor had told her the week before that he would leave her alone about performance issues if she had seven or more sales that week. She had asked for additional training but did not receive it. In spite of her having nine sales, he still went ahead with the performance discipline. When she asked him to explain why he was giving her a write up he told her to sign it or go home. He called a trainer over who explained the training issue she had requested the week before and claimant was satisfied. When Hood arrived, claimant's supervisor went into his office. Hood called claimant into his office and discharged her for alleged insubordination without inquiring of her what happened.

**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 § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

"Balky and argumentative" conduct is not necessarily disqualifying. *City of Des Moines v. Picray*, (No. \_\_\_-\_\_\_, Iowa Ct. App. filed \_\_\_, 1986). 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. The conduct for which claimant was discharged was merely an inquiry about why her supervisor was changing the terms of her job performance expectations retroactively after she had not been trained as requested. This is not misconduct, and, benefits are allowed.

**DECISION:**

The December 18, 2014, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The benefits claimed and withheld shall be paid, provided she is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs