

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

RHONDA D KAYSER
Claimant

APPEAL NO: 20A-UI-02271-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CBE COMPANIES INC
Employer

OC: 02/16/20
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 6, 2020, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 27, 2020. The claimant participated in the hearing. Amanda Gatois, Human Resources Director and Martin Dodge, Operations Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One through Six were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time collector for CBE Companies from October 6, 2014 to February 14, 2020. She was discharged for being rude and condescending on calls.

On November 13, 2019, a consumer wanted the claimant to speak with her daughter and when her daughter got on the phone the claimant was "rude" and her "tone was condescending" (Employer's Exhibit Three). A Better Business Bureau complaint was lodged as a result of the call and on November 14, 2019, the employer issued the claimant a coaching for quality of work (Employer's Exhibit Three).

On February 11, 2020, the employer received a complaint about one of the claimant's calls and planned to issue her a written warning. Before it could do so it received a call from Comcast asking to have the account removed from the employer's office because it had a customer complaint. Comcast reviewed all of the calls on its account and stated that in a call handled by the claimant October 17, 2019, she was "dripping with sarcasm" (Employer's Exhibit One). Comcast wanted the claimant either coached or removed and the employer chose to terminate the claimant's employment because she was coached previously and did not change her behavior and was removed from another account March 23, 2017.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant handled approximately 40 calls per hour. The employer cited three complaints between October 17, 2019, and February 11, 2020. While the claimant may have been rude and condescending on occasion, three incidents in four months is not excessive. The employer planned to issue the claimant a verbal warning for the February 11, 2020, call but then received

the complaint from Comcast. Although Comcast described the claimant as “dripping with sarcasm” it did not indicate what she actually said. Additionally, that call took place in October 2019, and cannot be considered a current act of misconduct. Under these circumstances, the administrative law judge must find the employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The March 6, 2020, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.



Julie Elder
Administrative Law Judge

May 11, 2020
Decision Dated and Mailed

je/scn