

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

LYNNE R MILLER  
927 NEWTON ST  
WATERLOO IA 50703

APAC CUSTOMER SERVICES OF IOWA  
c/o TALX UCM SERVICES INC  
PO BOX 283  
SAINT LOUIS MO 63166

Appeal Number: 05A-UI-03736-S2T  
OC: 02/27/05 R: 03  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Lynne Miller (claimant) appealed a representative's April 4, 2005 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with APAC Customer Services of Iowa (employer) for failing to perform satisfactory work even though she was capable of doing satisfactory work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 2, 2005. The claimant participated personally. The employer did not provide a telephone number where it could be reached and, therefore, did not participate.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 13, 2001, as a full-time customer service order taker. She received written warnings on January 7, February 8 and 9, 2005, for failure to follow instructions with regard to speaking with customers. She received a low call score and was warned that further infractions could result in her termination.

On March 2, 2005, the employer terminated the claimant because she had another low scored call. The claimant was supposed to give the customer the company e-mail address. She did not give the company e-mail address because the customer did not have access to the Internet. The claimant was unaware of any rule which allowed her to forgo giving the e-mail address when a customer did not have Internet access. Sometimes the claimant was distracted at work but she did not know if she was distracted during the call for which she was terminated.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes she was.

Iowa Code section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of her work. The claimant disregarded the employer's right by repeatedly failing to follow instructions with regard to her telephone calls with customers. The claimant's disregard of the employer's interests is misconduct. As such she is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's April 4, 2005 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount provided she is otherwise eligible.

bas/pjs