

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRAVIS R COULTER
Claimant

APPEAL NO. 08A-UI-08471-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

**OC: 12/09/07 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Qwest Corporation (employer) appealed a representative's September 19, 2008 decision (reference 03) that concluded Travis R. Coulter (claimant) was qualified to receive benefits, and the held the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 7, 2008. The claimant participated in the hearing. Mary Oto, a representative with Barnett Associates, appeared on the employer's half. Carol Murley, a customer service supervisor, testified on the employer's behalf. During the hearing Employer Exhibits One, Two, and Three were offered and admitted as 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 10, 2008. The employer hired the claimant to work as a full-time customer service agent. Murley supervised the claimant. The employer gave the claimant two weeks of training, and continued to monitor his work after he completed the training.

As a customer service agent, the claimant processed 800 to 1000 phone calls a day. During his employment, Murley and other supervisors talked to the claimant about ways to do his job better. The supervisors also told him when he did his job satisfactorily. (Employer Exhibit Three.)

On May 11, 2008, the employer received a customer complaint about the claimant. The customer reported that the claimant appeared reluctant to help her and provide her the information she requested. The claimant was not reluctant to provide the customer with the requested information, but was being careful about providing her with accurate information.

(Employer Exhibit Two.) On June 30, 2008, the employer gave the claimant a warning of dismissal because of attendance issues. (Employer Exhibit Three.)

On August 18, the employer received a second customer complaint about the claimant. This customer reported that the claimant scolded him for calling back a second time in an attempt to find a phone number. The claimant was not scolding the customer, but understood how the customer may have had that perception. As a result of receiving two customer complaints, the employer gave the claimant a second warning of dismissal on August 20, 2008. (Employer Exhibit Two.) On August 20, the employer warned the claimant that if he had any further customer complaints his job was in jeopardy.

On August 25, Murley started an unannounced coaching observation of the claimant's job performance. While doing so, she heard a customer request a lawyer in Brooklyn Center, Minnesota. When the claimant attempted to tell the customer what he found, the customer interrupted him and started talking. Murley concluded the claimant became upset because he interrupted the customer and tried to tell her what he had or found. Murley heard the customer yell at the claimant and then hang up. Murley concluded the customer reacted to the claimant's tone of voice, which she concluded had not been professional or courteous. Murley immediately took the claimant off the phone and talked to him. When Murley talked to the claimant, he acknowledged he should not have interrupted the customer and that his tone may not have been acceptable.

On August 27, the employer discharged the claimant for continued unsatisfactory job performance. The claimant not only had two customer complaints, the employer concluded he failed on August 25 to talk to a customer respectfully.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant. The employer was not satisfied with the claimant's job performance, even after giving the claimant two warnings for unsatisfactory job performance. Unsatisfactory job performance does not by itself constitute work-connected misconduct. On August 25, the claimant used poor judgment when he

interrupted the customer and tried to tell her what he found for her. Since the customer yelled at him and then hung up on him, it is obvious she was upset. Even though the customer was upset, the facts do not establish that the claimant intentionally tried to upset the customer. He was negligent in the way he handled the situation and made a mistake when he interrupted the customer. The facts establish that even though the claimant had two other customer complaints, he tried to perform his job satisfactorily. The facts do not establish that the claimant committed work-connected misconduct. Therefore, as of August 31, 2008, he is qualified to receive benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's September 19, 2008 decision (reference 03) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of August 31, 2008, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw