

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

MARY C DAVIS  
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QWEST CORPORATION  
c/o EMPLOYERS UNITY INC  
PO BOX 749000  
ARVADA CO 80006-9000

Appeal Number: 04A-UI-09975-DT  
OC: 08/22/04 R: 03  
Claimant: Respondent (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

STATEMENT OF THE CASE:

Qwest Corporation (employer) appealed a representative's September 9, 2004 decision (reference 01) that concluded Mary C. Davis (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 7, 2004. The claimant participated in the hearing. Anna Patron of Employer's Unity appeared on the employer's behalf and presented testimony from one witness, Jamie McCallister. During the hearing, Employer's Exhibit One was read into 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on October 22, 2002. She worked full time as a sales and service consultant in the employer's Des Moines, Iowa center. Her last day of work was August 17, 2004. The employer discharged her on that date. The reason asserted for the discharge was a violation of the employer's friends and family policy.

The employer's orientation explanation of the policy provided that employees could not "access company information or use Qwest assets for personal reasons. This also means that you can not access your personal accounts or the accounts of family and friends . . . Quest employees are also not allowed to access, either directly or indirectly, any account that belongs to a friend and/or relative. More specifically, Qwest Employees may not view or change their own personal accounts or accounts of family and friends."

On or about July 12 another sales and service consultant approached the claimant and asked her to access the account of the other employee's girlfriend with whom the other employee lived. The other employee indicated that he wanted to add a DSL computer line. However, when the claimant ran a check of the line, the other employee's residence was not compatible with DSL. When she informed the other employee of this, he was upset, as he had previously been assured that he would be able to get DSL. As a conciliatory gesture, the claimant gave the other employee's girlfriend's account an adjustment of \$75.00, which was within the claimant's range of discretion. Consistent with her routine, she had not checked the prior comment history on the account, which would have informed her that the other employee had gotten another \$75.00 for essentially the same complaint a short time previously.

The claimant was aware of the friends and family policy, but she did not view the accessing of the other employee's account to be a violation, as he was not family, and she did not consider him a friend. He was somewhat acquainted with her boyfriend by also working with the claimant's boyfriend, and the other employee had played one game on the same softball team as the claimant, but otherwise they did not have any social or personal contact.

The employer became aware of the claimant's involvement with this transaction approximately the end of July or early August. The other employee was discharged for other irregularities on July 27, 2004. The claimant was not approached regarding the matter until August 17, 2004. She initially indicated the transaction was a standard adjustment on a call in, as she did not remember the specifics of the transaction until the employer provided her with further information.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue 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 questions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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 Section 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).

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 focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:

- a. Manifest equal culpability, wrongful intent or evil design; or
- b. Show an intentional and substantial disregard of:
  1. The employer's interest, or
  2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is her involvement with the transaction with the other employee. First, the employer's policy does not clearly define "friends" to include all other employees. Under the circumstances of this case, the claimant's failure to understand that a transaction for any other employee was a violation was at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. Secondly, there is no current act of misconduct as required to establish work-connected misconduct. 871 IAC 24.32(8); Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988). The incident in question occurred over a month prior to the employer's discharge of the claimant, and over two weeks after the employer knew or should have known of the transaction. 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 September 9, 2004 decision (reference 01) is affirmed. 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.

ld/kjf