

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DAVID ROBERTS
4003 S.E. 2nd STREET
DES MOINES IA 50315**

**ACRO SERVICE CORP.
c/o TALX UCM SERVICES, INC.
P.O. BOX 283
ST. LOUIS MO 63166**

Case No. 21IWDUI2033

APPEAL 21A-UI-03460

**ADMINISTRATIVE LAW JUDGE
DECISION**

APPEAL RIGHTS:

This Decision Shall Become Final, unless within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of the decision, 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:

***Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
or
Fax (515) 281-7191***

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.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

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.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

ONLINE RESOURCES:

UI law and administrative rules: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-law-and-administrative-rules>

UI Benefits Handbook: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-handbook-guide-unemployment-insurance-benefits>

Handbook for Employers and forms: <https://www.iowaworkforcedevelopment.gov/employerforms>

Employer account access and information: <https://www.myiowaui.org/UITIPTaxWeb/>

National Career Readiness Certificate and Skilled Iowa Initiative: <http://skillediowa.org/>

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAVID ROBERTS

Claimant

ACRO SERVICE CORPORATION

Employer

APPEAL 21A-UI-03460

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/23/20

Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the January 12, 2021 (reference 04) unemployment insurance decision denying benefits on the basis that the claimant had been discharged for leaving work without the employer's permission. The parties were properly notified of the hearing. A telephone hearing was held on March 29, 2021. The claimant, David Roberts, participated personally. The employer, ACRO Service Corporation (ACRO) did not participate in the hearing.

The administrative law judge took official notice of the claimant's unemployment insurance benefits records including the fact-finding documents. Prior to the hearing, ACRO submitted additional documents, including an email received from IWD Unemployment Insurance Manager Tracy Page, a signed acknowledgement of ACRO's employee handbook and an apparent excerpt from the handbook covering resignations and at-will terminations. All documents were admitted without objection.

ISSUES:

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

ACRO is a staffing agency based in Michigan. In May 2020, ACRO hired Roberts to work in a temporary capacity as a customer service representative for Iowa Workforce Development (IWD) in Des Moines, Iowa. Roberts worked full-time, Monday through Friday, from 8:00 a.m. to 5:00 p.m. His job duties included answering questions and providing general customer service to individuals who had submitted claims or were considering submitting claims for unemployment insurance.

Roberts worked without incident until October 27, 2020, at which time he was called to meet with Tracy Page, IWD's unemployment insurance manager. Prior to that time, Roberts had never met Page, but had communicated with him by email. When Roberts arrived at Page's office, Page informed him that he was fired effective immediately. Page stated that IWD had

received a client complaint reporting that Roberts had told the client to “shut up” during the telephone call. Page told Roberts he must turn in his badge and could go collect his personal belongings from his cubicle. Page escorted Roberts to his cubicle, and subsequently off the premises. Page then informed ACRO by email that IWD was terminating Roberts’ contract immediately.

Documents submitted by ACRO indicate that after learning of the October 27, 2020 call, Page conducted a random sampling of other calls taken by Roberts and found several other calls during which Roberts was rude and confrontational. This information was not provided to Roberts at the time of his termination, however.

Roberts stated during the March 29, 2021 hearing that he did the best he could to handle difficult telephone calls. Due to the increased volume of layoffs and terminations attributed to the pandemic, many people were waiting months to receive decisions on their unemployment claims. Many callers therefore were angry, under stress or both when they called Roberts’ department. Roberts was given very little training at the start of his employment, and had difficulty reaching supervisors with questions. Roberts did not know how to respond when Page told him he was being terminated. Roberts simply collected his things, turned in his badge, and went home.

REASONING AND CONCLUSIONS OF LAW:

There is no dispute that Roberts was discharged from his employment with ACRO as a customer service representative for IWD’s Des Moines office. This case therefore will be evaluated pursuant to Iowa Code § 96.5(2)a rather than § 96.5(1). For the reasons that follow, the administrative law judge concludes Roberts was discharged from employment for no disqualifying reason. Benefits are allowed.

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 defines “misconduct” in this context as:

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).

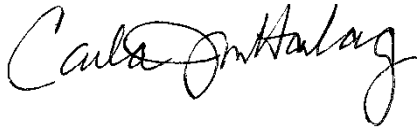
As recently clarified by the Iowa Supreme Court: "The standard an employer must meet to sustain disqualification for unemployment benefits is more demanding than the standard ordinarily required to support a termination of employment for just cause." *Irving v. Employment Appeal Bd.*, 883 N.W.2d 179, 195-96 (2016); see also *Gaborit v. Employment Appeal Bd.*, 743 N.W.2d 554, 558 (Iowa Ct. App. 2007) (violation of known work rule does not establish *per se* disqualification from receiving unemployment compensation). "Unemployment statutes should be interpreted liberally to achieve the legislative goal of minimizing the burden of involuntary unemployment." *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 10 (Iowa 1982). The employer has the burden of proof in establishing disqualifying job misconduct. *Id.* at 11.

Here, there is no dispute Roberts was fired for being rude to several IWD claimants. The fact Roberts' job performance was deemed unsatisfactory does not establish that he acted with "willful or wanton disregard" of ACRO's or IWD's interests, however, creating a "material breach" of his employment duties. Nor has ACRO proved he acted with wrongful intent or evil design. See, e.g., *Billingsley v. Iowa Dep't of Job Servs.*, 338 N.W.2d 538, 540 (Iowa Ct. App. 1983) (distinguishing between standard for discharging an employee for known violation of work rules and standard to establishing misconduct sufficient to deny unemployment compensation). Rather, Roberts testified credibly that he attempted to diffuse angry or impatient claimants, but does not believe he had been given sufficient training to better manage such calls.

The documents provided by ACRO indicates Roberts was employed on an at-will basis. An employer generally may discharge an at-will employee for any non-discriminatory reason. Nevertheless, to disqualify Roberts from receiving unemployment benefits, it was ACRO's burden to prove Roberts acted with wilfull or wanton disregard of the employers' interest, or exhibited recklessness or carelessness of such a degree as to suggest wrongful intent or evil design. No such evidence exists in the present case. Accordingly, the representative's decision must be reversed.

DECISION:

The January 12, 2021 (reference 04) unemployment insurance decision is **REVERSED**. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

A handwritten signature in black ink, appearing to read 'Carla J. Hamborg', written in a cursive style.

Carla J. Hamborg
Administrative Law Judge

March 30, 2021
Decision Dated and Mailed

CJH/lb

cc: David Roberts, Claimant (by first class mail)
ACRO Service Corp., Employer (by first class mail)
Nicole Merrill, IWD (by email)
Joni Benson, IWD (by email)