

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GLEND A J FLEENER

Claimant

APPEAL NO: 12A-UI-14737-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEARS ROEBUCK & CO

Employer

OC: 11/11/12

Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's December 7, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Justin Crick, the human resource manager, and Mark Underwood, a team leader, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in October 2005. She worked in a call center as an automotive sales agent. Underwood supervised her. In the last six months of her employment, the employer required employees to ask each calling customer if they wanted to purchase an item. The employer's commitment to excellence policy required employees to ask for a sale during each call.

During her employment, Underwood gave the claimant several written warnings for failing to ask a customer for a sale. The claimant received written warnings in 2012 on June 12, late June, July 27, and October 6, 2012. When the employer asked why she had not asked for a sale, the claimant did not know. The claimant did not realize she had not asked the customer if she could place an order. The one call the claimant listened to, she acknowledged she had not asked for a sale. Again, she did not know why she had not asked. The claimant became increasingly frustrated when the employer gave her written warnings. She asked for guidance or more training because she did not understand what she was doing incorrectly. The claimant did not believe she received the additional training she requested.

After receiving the October 6 final written warning, the claimant understood her job was in jeopardy. In addition to computer pop-ups that reminded employees to ask for a sale during the

call, the claimant put up notes on her desk reminding her to ask the customer if she could place an order for the customer.

On November 12, the employer discharged her. After monitoring her calls, Underwood discovered on November 2 and 8 she had not asked a customer if she could place an order from them. The claimant did not listen to these calls.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established justifiable business reasons for discharging the claimant. The evidence does not establish that the claimant intentionally disregarded the employer's interests or even substantially violated the employer's commitment to excellence policy. The claimant tried to follow the employer's policy by putting up notes to remind herself to ask customers for a sale and asked the employer for guidance. While the employer met weekly with the claimant and other sales agents, the claimant did not receive any additional one-on-one training. Even though the claimant did not ask for a sale on every call the employer monitored, the evidence does not establish that she committed work-connected misconduct. As of November 11, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's December 7, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of November 11, 2012, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs