

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANGELA N SIGMUND**  
Claimant

**APPEAL NO. 07A-UI-00059-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FIRST ADVANTAGE**  
Employer

**OC: 01/08/06 R: 02  
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

First Advantage (claimant) appealed a representative's December 22, 2006 decision (reference 04) that concluded Angela N. Sigmund (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was 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 January 22, 2007. The claimant participated in the hearing. Ryan Leroque, a staffing manager, appeared on the employer's behalf. 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 claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked about three months as a temporary employee for the employer. The employer then hired the claimant as a full-time customer service representative on June 26, 2006. After the employer hired the claimant, the employer noticed problems with the quality of the claimant's work. The employer requires employees to meet a 90 percent quality rating. After the claimant received a quality rating of less than 90 percent, the employer gave the claimant two written warnings. The claimant received the warnings for the week of October 2 and October 9. On November 28, the employer gave the claimant her final written warning for failing to meet the employer's quality standards. The employer warned the claimant that if she failed to receive a 90 percent rating the next week, the employer would discharge her.

On December 4, the employee rating the claimant's work gave her zero on a call. This meant there was no way for the claimant to meet the 90 percent rating at the end of the week. On December 4, the employer informed the claimant she could either resign or the employer would

discharge her. The claimant informed the employer she would resign because she already planned to quit by Christmas.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. When a claimant is given the choice of resigning or being discharged, the employer has initiated the employment separation. For unemployment insurance purposes, the employer discharged the claimant. 871 IAC 24.26(21).

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 compelling business reasons for discharging the claimant. The law, however, specifically states unsatisfactory performance due to inability does not rise to the level of work-connected misconduct. The facts show a history of the claimant failing to meet the employer's quality standards. Part of the problem stems from the fact that different standards are used from day to day and the two people who evaluated the claimant's performance had different standards to judge the claimant's work performance. The evidence does not establish that the claimant intentionally failed to perform her job satisfactorily. Therefore, the claimant did not commit work-connected misconduct. As of December 3, 2006, the claimant is qualified to receive unemployment insurance benefits.

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

If the employer has information that the claimant worked and received wages from another employing entity after December 4, the employer may submit this information to the local Workforce office so personnel can investigate.

**DECISION:**

The representative's December 22, 2006 decision (reference 04) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of December 3, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw