

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CINDY J POGUE**  
Claimant

**APPEAL NO. 10A-UI-09509-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PROCOM INC**  
Employer

**OC: 05/23/10**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Cindy Pogue, filed an appeal from a decision dated June 24, 2010, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 24, 2010. The claimant participated on her own behalf. The employer, Procom, participated by Human Resources Manager Tina Hill and Project Manager Julie Waddell.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Cindy Pogue was employed by Procom from November 14, 2006 until May 26, 2010 as a full-time customer service agent (CSA) taking incoming calls. The claimant received a copy of the employee handbook, which sets out the progressive disciplinary policy. The policy does notify the employees that disciplinary steps may be skipped depending on the seriousness of the rule violation.

The employer's protocol requires the CSA to greet the customer as soon as the call connects. On May 19, 2010, a floor leader heard the claimant take a call but not greet the caller. The leader could hear the customer speaking on the other end of the line but the claimant disconnected the call without speaking. The leader pulled a total of ten calls from the three-day period May 17, 18, and 19, 2010, to review. All ten of the recordings indicated the call had connected but Ms. Pogue did not make any greeting for six to twelve seconds and then disconnected the calls without speaking. Her call logs showed the call had been completed.

If a CSA has a call which disconnects on its own, that is to be noted in the daily call log. If it happens more than once in a short period of time, the floor leader should be notified of an equipment problem. A check of Ms. Pogue's log did not show any notation of an equipment failure and nothing was reported to any of the floor leaders for the ten calls reviewed for the investigation.

After the leader had concluded the investigations, the matter was referred to Project Manger Julie Waddell and she consulted with Vice President of Operations Tad Whittom. They discussed the issue and concluded the claimant should be discharged. The matter was referred to human resources and on May 26, 2010, the claimant was notified by Ms. Waddell and Human Resources Manager Tina Hill. The call which prompted the investigation was played for her.

The claimant acknowledged she had disconnected the calls without greeting the customer and noted it as being completed in her records in order to increase her call statistics. These completed call statistics can negatively or positively impact the CSA's rate of pay. The claimant felt she should have been given a written warning, but the employer considers disconnecting customers and falsifying the records to be sufficient grounds to warrant immediate discharge without prior warning.

### **REASONING AND CONCLUSIONS OF LAW:**

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.

The claimant knew she was not to disconnect customers or falsify the call logs. Her motivation to do so anyway appears to have been prompted by her concern about increasing her wages. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and does not warrant prior warnings. It resulted in unsatisfied customers, which is a negative impact on the employer's business. In addition, the claimant was paid money to which

she was not entitled as a result of this falsification. This is conduct not in the best interests of the employer and the claimant is disqualified.

**DECISION:**

The representative's decision of June 24, 2010, reference 01, is affirmed. Cindy Pogue is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw