

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

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QWEST CORPORATION
c/o EMPLOYERS UNITY INC
PO BOX 749
ARVADA CO 80006-9000

Appeal Number: 04A-UI-01696-ET
OC 01-18-04 R 02
Claimant: Appellant (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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 16, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 1, 2004. The claimant participated in the hearing. Jamie McAllister, Team Leader; Mike Hanna, Security Representative; Sheryl Miller, Customer Service Manager; and Diane Elkins, Employer Representative, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time customer relations specialist for Qwest Corporation from

February 3, 2003 to January 22, 2004. On January 8, 2004, Manager Brad Money told Team Leader Jamie McAllister that Union Steward Mike Thompson had contacted him in regard to threats made by the claimant against Mr. Money. Ms. McAllister notified Security Representative Mike Hanna of the situation and later that day Ms. McAllister and Mr. Hanna interviewed Customer Relations Specialist Chris Reha. Mr. Reha stated that on January 7, 2004, he and the claimant were talking about a meeting she had with Mr. Money a few weeks earlier and during the conversation the claimant became "agitated" while expressing her anger about Mr. Money in a "very loud, belligerent and profane manner." The claimant told Mr. Reha that following the meeting she told Mr. Money she "better never catch (him) out of this place" and that she made the statement in front of Union Steward Thompson. Mr. Reha said that during his conversation with the claimant she also told him she would "beat the shit out of (Mr. Money) outside." Mr. Hanna asked Mr. Reha if he felt the claimant's threats toward Mr. Money were serious in nature and Mr. Reha indicated that because he had observed the claimant's temper during the time he worked with her, he believed she could potentially act on her threats. Mr. Hanna and Ms. McAllister then interviewed Mr. Thompson, who stated he was reluctant to participate because of his union position but because the information was not gained while he was acting in his capacity as a steward and because he believed the claimant's comments regarding Mr. Money to be serious, he felt "compelled" to report what the claimant told him. Mr. Thompson recounted that a few days prior to the interview the claimant was at his desk talking about Mr. Money and became more angry as she discussed him, eventually stating if she "ever saw him outside of this building he's fucking done." Mr. Thompson said he was concerned because he had observed the claimant in "numerous loud and profane outbursts in the office" and considered her "erratic" and "unstable." On January 14, 2004, Mr. Hanna and Ms. McAllister interviewed Customer Relations Specialist Corey Gymer, who stated he sat near the claimant during the preceding five or six months and they were friendly with one another. He said he observed several "emotional outbursts" by the claimant during which she was "very vocal, loud and profane." Mr. Gymer stated that Mr. Money had been the claimant's "primary target the past few weeks" and he felt her anger was escalating and included threats of physical harm to Mr. Money such as, "I want to kick his ass" and "If I see him outside of work, I will do him in." Mr. Gymer told the employer he felt "unsafe" at work because of the claimant and believed she might "act out" her anger. Mr. Hanna and Ms. McAllister then interviewed Customer Relations Specialist John Mapes, who stated he had also heard loud outbursts from the claimant and heard her make physical threats toward Mr. Money, but he did not know whether those remarks were serious. Mr. Hanna and Ms. McAllister then interviewed Customer Relations Specialist Debra Foster, who stated approximately three or four weeks earlier the claimant told her Mr. Money embarrassed her and, "If he tries to put me in my place again I'll beat the shit out of him." Ms. Foster said she had heard the claimant make similar but "less violent" remarks and twice told the claimant that Qwest had a "very low tolerance for comments that could be considered in any way threatening or violent." Ms. Foster indicated she considered the claimant's statements threatening and was concerned she might act on her threats, but she was either not asked or did not provide an explanation of why she did not report the situation to the employer. Mr. Hanna and Ms. McAllister then interviewed the claimant with Union Steward Scott Hogue present. The employer asked the claimant if she was aware of the employer's policy on threats and violence in the workplace. The claimant said that had been covered during her training period. The employer asked the claimant about the threatening comments other employees reported and the claimant responded that she had met with Mr. Hogue three times about Mr. Money. The employer explained that the comments occurred outside of any meetings she had with union representatives and had been reported by employees based on conversations they had with the claimant. The claimant denied making the comments attributed to her by her co-workers but admitted she was unhappy with Mr. Money and stated he had sexually harassed her. When the employer pressed her for

details the claimant said she felt Mr. Money “got along” better with the men but did not cite any specific incidents of sexual harassment. After Mr. Hogue requested a short recess to speak to the claimant alone the claimant told the employer she remembered a cell phone call with her boyfriend while she was outside on a break during which she told him about problems she was having with Mr. Money, and he stated he wanted “to come down and kick Money’s ass.” The claimant may have repeated the comment within hearing of other employees. The employer told the claimant that the comments reported all occurred inside the building and the claimant again denied making any threats toward Mr. Money. The employer terminated the claimant’s employment January 22, 2004 for threats of violence in the workplace.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant denies making threatening comments toward Mr. Money, five employees independently reported threatening statements made by the claimant. It is clear, and the claimant admits, she did not like Mr. Money. Her intense dislike of him, coupled with the statements from her co-workers regarding at least five different incidents, convinces the administrative law judge that the claimant did make threatening comments about Mr. Money. Additionally, when interviewed the employees all remarked on the claimant's volatility and the fact she often had loud, angry and profane outbursts, seemingly out of proportion to the situation she was responding to and inappropriate to the workplace environment. Unfortunately, while the claimant may never have acted on her statements, in today's climate an employer cannot ignore threats of violence. The claimant was aware of the employer's workplace violence policy and knew or should have known that the comments she made regarding Mr. Money would result in disciplinary action up to and including termination. The claimant's actions occurred over a period of time and the statements were made to several people rather than a single friend or confidante and therefore cannot be considered an isolated incident. The claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. Consequently, the administrative law judge concludes the employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The February 16, 2004, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

je/b