

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARQUEVA W PRICE**  
Claimant

**APPEAL NO. 13A-UI-02337-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DIVERSIFIED MARKETING**  
Employer

**OC: 01/06/13**  
**Claimant: Respondent (2-R)**

Section 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer, Diversified Marketing, filed an appeal from a decision dated February 19, 2013, reference 04. The decision found the employer's protest was not timely. After due notice was issued, a hearing was held by telephone conference call on March 26, 2013. The claimant participated on her own behalf. The employer participated by Manager Bruce Ege. Exhibit D-1 was admitted into the record.

**ISSUE:**

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

**FINDINGS OF FACT:**

Claimant's notice of claim was mailed to employer's address of record on February 4, 2013, and received by employer within ten days. The notice of claim contains a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial mailing date. Employer did not file a protest until February 18, 2013, which is after the ten-day period had expired. The employer did not receive the notice of claim in the post office box until February 18, 2013.

Marqueva Price was employed by Diversified Marketing from July 9, 2012 until January 4, 2013 as a part-time sales representative making outgoing calls. She had received a written warning on November 29, 2013 for missing nine days of work, all but two of them for personal problems. She missed two more days of work after that warning.

On December 18, 2012, she received a verbal warning for letting a phone ring twelve times. The policy is not to let it ring for more than four times. On January 4, 2013, Manager Bruce Ege was doing a live monitoring of her call to a customer. When the customer said she already had two lines, one of which was a fax, Ms. Price said "okay" and hung up. This is contrary to policy and training which requires her to explain the services available and attempt to make the sale. But it was at the end of the shift and she did not follow through. Mr. Ege immediately called her into a private conference and told her she was being fired.

Marqueva Price has received unemployment benefits since filing a claim with an effective date of January 6, 2013.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.6-2 provides in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

The employer did not receive the notice of claim until after the ten-day time period had ended, and filed the protest the same day it was received. The administrative law judge accepts the protest as timely.

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 was warned her job was in jeopardy as a result of her attendance and poor work performance. In spite of the warning she hung up on a customer before she had delivered the required information about services available to the client. This was detrimental to the employer's business and a direct and knowing violation of policy and training. This is a violation

of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representatives' decision dated February 19, 2013, reference 04, is reversed. The employer's protest shall be accepted as timely. Marqueva Price is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css