

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RANDY V KELLEY JR**  
Claimant

**APPEAL NO. 08A-UI-01109-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QWEST CORPORATION**  
Employer

**OC: 12/30/07 R: 01**  
**Claimant: Respondent (2)**

Section 96.5(2)a – Discharge for Misconduct  
Section 96.3(7) – Recovery of Overpayments

**STATEMENT OF THE CASE:**

Qwest Corporation filed an appeal from a representative's decision dated January 23, 2008, reference 01, which held that no disqualification would be imposed regarding Randy Kelley's separation from employment. After due notice was issued, a hearing was held by telephone on February 18, 2008. The employer participated by Brendan White, Telesales Manager, and Brian Martin, Team Leader. The employer was represented by Steve Zaks of Barnett Associates. Exhibits One through Six were admitted on the employer's behalf. Mr. Kelley did not respond to the notice of hearing.

**ISSUE:**

At issue in this matter is whether Mr. Kelley was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Kelley was employed by Qwest from June 25, 2007 until January 4, 2008 as a full-time consumer sales and service associate. He was discharged for violating the employer's standards.

The employer met with Mr. Kelley on November 16, 2007 concerning deficiencies in his performance. He was specifically advised that "riding" calls would not be tolerated. The term "riding" means remaining on a call after it has been transferred to another individual or department. Two incidents of riding were addressed in the counseling, one in which Mr. Kelley remained on the line for ten minutes and another in which he remained on the line for twenty-one minutes. He rode calls to avoid taking additional calls. Mr. Kelley was told during the counseling that he must also properly identify callers and recap orders. At one point, Mr. Kelley told the employer that he could be good when he wanted to but chose not to be.

The employer met with Mr. Kelley again on December 17 because of continuing problems with his performance. It was noted that he had ridden a call for six minutes after transferring it. It

was also noted that he remained on the line for eight minutes when he received a “dead air” call, meaning no customer was on the line when he answered his phone. The employer also discussed other instances of Mr. Kelley failing to follow the correct call-handling procedures. He told the employer that he did not follow the correct procedures because he was feeling lazy and did not feel like working hard. He was given a written warning of dismissal during the meeting of December 17.

The decision to discharge Mr. Kelley was based on his conduct of December 20. He put a customer on hold to answer his cell phone. The cell phone call was from his grandmother and he thought it might be an emergency. He had the customer on hold for 12 to 15 minutes. He did not identify any family emergency when questioned by the employer as to the reason for the grandmother’s call. He was suspended on December 20 and advised of his discharge on January 4, 2008.

Mr. Kelley filed a claim for job insurance benefits effective December 30, 2007. He has received a total of \$1,968.00 in benefits since filing his claim.

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

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). For reasons that follow, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Mr. Kelley developed a pattern of disregarding the standards he knew the employer expected of him. He knew before the counseling of November 16 that he was not to ride calls. In spite of this knowledge, he engaged in the conduct on two occasions on October 30. Even after the warning of November 16, he still rode a call for six minutes on December 17. Also on December 17, he remained on the line with “dead air” for eight minutes during another call.

Mr. Kelley was riding calls in order to avoid work. He was not participating in the calls he transferred and, therefore, there was no reason for him to remain on the line. By remaining on the line, he was not available to take other incoming calls. It was reasonable for the employer to expect him to be fully productive during the time for which he was receiving pay. Mr. Kelley’s conduct in riding calls had the potential of adversely impacting customer service as it might cause other customers to have to wait longer for assistance.

As of December 17, Mr. Kelley was clearly on notice that his handling of customer calls was jeopardizing his continued employment with Qwest. His discharge was triggered by the fact that he put a customer on hold for 12 to 15 minutes while he talked with his grandmother on December 20. He did not indicate to the employer that there was some emergency that necessitated him remaining on the call with his grandmother while having a customer on hold. Placing a customer on hold for more than ten minutes without justification is clearly contrary to the employer’s interest in maintaining good customer service.

The administrative law judge concludes that Mr. Kelley’s conduct in deliberately avoiding work and placing a customer on hold for an inordinate amount of time constituted a substantial disregard of the standards the employer had the right to expect. It is concluded, therefore, that disqualifying misconduct has been established and benefits are denied. Mr. Kelley has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

**DECISION:**

The representative's decision dated January 23, 2008, reference 01, is hereby reversed. Mr. Kelley was discharged by Qwest for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Kelley has been overpaid \$1,968.00 in job insurance benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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