

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE L BERNDT
Claimant

APPEAL NO. 12A-UI-11788-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CALERIS INC
KIRSTIN HILL**
Employer

**OC: 08/26/12
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated September 25, 2012, reference 01, which denied unemployment insurance benefits. After due notice a telephone hearing began on October 29, 2012 and was reconvened on November 29, 2012 to take additional evidence. Claimant appeared personally. Appearing on behalf of the claimant was her attorney, Ms. Jane Odland. The employer participated by Ms. Stacy Springer and Ms. Angie Harlow.

ISSUE:

The issue is whether the claimant was discharged for misconduct in connection with her work.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Michelle Berndt was employed by Caleris, Inc. from May 13, 2009 until August 24, 2012 when she was discharged from employment. Ms. Berndt was employed as a full-time lead technical support representative and was paid by the hour. Her immediate supervisor was Cathy McKinny.

Ms. Berndt was discharged on August 24, 2012 when the employer believed that she had acted inappropriately by using her computer to remote into the computer in use by a second employee and by showing the screen shot of the second employee's computer screen to a third employee in violation of the company's confidentiality policy. The employer believed that because of a dispute between the parties that Ms. Berndt had accessed the other employee's screen to determine whether or not the other employee was submitting a complaint about the claimant. Because Ms. Berndt had previously been warned for failing to return a call to a client and had also been warned in the past about her demeanor towards a co-worker, the decision was made to terminate Ms. Berndt from her employment.

During the incident in question the other employee had complained about Ms. Berndt and a conversation that Ms. Berndt was having with a fellow employee. Because the complaining employee had stood up and loudly proclaimed her dissatisfaction, Ms. Berndt had accessed the

other employee's screen to determine if that employee was actually engaged in work herself. Ms. Berndt denies intentionally showing the screen to another worker. Ms. Berndt had complained in the past about not being able to work harmoniously with the employee who was complaining about her. The claimant had also requested in the past to have her work station moved to a corner area where other employees were not able to casually observe the contents of her computer screen.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is not.

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 employer has the burden of proof in establishing job disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not always serious enough to warrant a denial of unemployment insurance benefits. Such misconduct must be "substantial." When

based upon carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature.

The evidence in this case is highly disputed. The employer relies upon hearsay evidence to establish that Ms. Berndt intentionally violated the company’s confidentiality policy by accessing a screen shot of another worker and by displaying that screen shot intentionally to another worker in violation of the company’s confidentiality policy. In contrast, the claimant appeared personally and provided firsthand, sworn testimony denying intentionally displaying the screen shot to another worker. Ms. Berndt testified that she had had difficulty with the worker that had complained about her in the past. The claimant testified that she had requested to be moved to a different work location where she would not be in close proximity to the complaining worker and also to a work location where other employees could not casually observe the claimant’s computer screen.

Although hearsay testimony is admissible in administrative proceedings, it cannot be accorded the same weight as sworn, direct testimony. The administrative law judge finds the claimant’s testimony to be credible and not inherently improbable and, therefore, finds the weight of evidence is established in favor of the claimant.

The question before the administrative law judge is not whether the employer had a right to discharge Ms. Berndt but whether the discharge is disqualifying under the provisions of the Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, the evidence in the record is not sufficient to establish intentional, disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative’s decision dated September 25, 2012, reference 01, is reversed. Claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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