

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN M SWARTZ

Claimant

APPEAL NO. 06A-UI-08967-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION

Employer

OC: 03 R: 03

Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 30, 2006, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on September 21, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Linda Schaffer. Michelle Hawkins participated in the hearing on behalf of the employer with a witness, Diana Boyd. Exhibits One through Seven were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a customer assistance agent from September 13, 1999, and August 10, 2006. The claimant had received several warnings for unsatisfactory customer service after customers complained that she was rude while answering directory assistance calls and she was rated below standards when her calls were monitored.

The claimant received a written warning on April 10, 2006, after the employer received customer complaints that she was coldly professional toward customers and needed to show sincerity and interest in her vocal tone and ask the customers twice if they were there before releasing a call. She was informed that any further customer complaints could result in her dismissal. On April 17, 2006, the claimant received a warning of dismissal after a customer complaint that she had a condescending tone of voice and she received a below standard rating when she was monitored by a supervisor during a call on April 11. The warning of dismissal was reissued on June 19, after a customer complained on June 14 about the claimant's tone of voice and that she had sighed during the call. On July 5, the claimant was suspended because she received a below standard rating when she was monitored on June 23, she did not have a pleasant tone of voice, she had not answered a call accurately. She returned to work on July 10 and knew her job was in jeopardy if her customer service did not improve.

On August 8, the claimant took a call from a customer requesting a phone number from a customer. The claimant informed the customer that there was no listing in the city he had inquired about and indicated that she would check statewide. As she was telling the customer there was a possible listing in a different city, the customer interrupted the claimant and told her that was not what he asked for. The claimant replied that unfortunately there was no listing for the business in the state. The customer did not respond. The claimant then indicated to the customer that she was sorry. When the customer again did not respond, she believed she had satisfied the requirement of querying twice before hanging up and disconnected the call. The claimant had been monitoring her tone of voice and did not believe she spoke harshly or rudely to the customer.

The customer later complained to a manager that the claimant had a bit of an attitude when she spoke to him and she had hung up. Based on the employer's past warnings, the claimant was discharged for having another customer complaint.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

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).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant's testimony regarding the final call was credible, and I believe the claimant queried the customer twice before disconnecting after she was satisfied that the customer had hung up. Having a "bit of an attitude" is hard to evaluate and the claimant's testimony that she was not unpleasant during the conversation is entitled to more weight than the hearsay to the contrary. While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No current act of misconduct has been proven.

DECISION:

The unemployment insurance decision dated August 30, 2006, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs