

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

DEANNA J JOHNSON  
1506 W 12<sup>TH</sup> ST  
DAVENPORT IA 52803

APAC CUSTOMER SERVICES INC  
C/O FRICK UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-10514-SWT  
OC: 08/29/04 R: 04  
Claimant: Respondent (2)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 15, 2004, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 20, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Tanis Burrell participated in the hearing on behalf of the employer with witnesses, Katie Vance, Adrienne Novitske, and Turkessa Hill.

FINDINGS OF FACT:

The claimant worked full time for the employer as a customer service representative from December 3, 2001 to August 26, 2004. The claimant was informed and understood that under the employer's work rules, abuse of or an act of aggression or threat of aggression toward an associate, customer, or vendor were grounds for discipline.

On August 26, 2004, the claimant took a call from a customer asking about her health insurance co-payment. The call had to be transferred to a representative with the client. The claimant placed the customer on hold and called the client. As was always the case, an interactive voice response unit (IVRU) answered the call. The claimant asked to speak to a representative. The IVRU replied, asking the claimant if there was anything that it could do for her. The claimant responded factiously that it could tell her where it was located so she could blow it up. The claimant understood from past experience that no matter what she said, the IVRU would respond that she should hold for the next available representative. She understood that she was talking real time with a machine that would not understand her statement. She did not know that what was said to the IVRU was recorded or could be monitored by the client or the employer and believed that only what was heard by the customer or a human representative of the client could be monitored and recorded. She was frustrated by the barriers set up to resolve the customer's issue and did not intend the comment as a threat to anyone.

The claimant's statement was monitored by her team lead and was reported to upper management. In fact, what is said to the IVRU is recorded and can be monitored by the client. The employer discharged the claimant on August 26, 2004, for directing a threat of violence to the IVRU.

#### 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).

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).

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 in this case. The claimant understood that no human could hear what she said to the IVRU. As such, the comment would be no different than profanity directed toward a malfunctioning copy machine in a case in which you reasonably, but mistakenly, believed no one else could overhear the comment.

DECISION:

The unemployment insurance decision dated September 15, 2004, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/b