

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL A WORTHAM**  
Claimant

**APPEAL NO: 10A-UI-05968-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QWEST CORPORATION**  
Employer

**OC: 03/07/10**

**Claimant: Respondent (2/R)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Qwest Corporation (employer) appealed a representative's April 12, 2010 decision (reference 02) that concluded Michael A. Wortham (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on July 9, 2010. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. John O'Fallon of Barnet Associates appeared on the employer's behalf and presented testimony from one witness, Colin Chrouser. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on October 12, 2009. He worked full time as a sales and service associate at the employer's Des Moines, Iowa call center. His last day of work was March 12, 2010. The employer discharged him on that date. The stated reason for the discharge was repeated failure to follow procedures to avoid errors in pricing packages after prior warning.

On March 10 the claimant took a call from a customer who wanted to go back to the package of long distance service and internet service that he had previously been under. The claimant indicated the customer would be put back on that prior package and stated a price. However, the package the claimant put on the customer's account was in fact not the same as the customer's prior package, nor was it the price that he told the customer. For example, the prior package and the package the claimant said he was putting the customer back on had unlimited long distance, while the package he actually put onto the customer's account had an additional

charge for long distance. Also, the price quoted by the claimant was only a preliminary price that would have gone up significantly after the first year, a fact he did not disclose.

The claimant was failing to use a standard job tool to assist in pricing service bundles. The claimant had been given multiple coachings for similar issues. He had previously received formal discipline for attendance issues as well as working off the clock and providing inaccurate information on pricing, including a prior warning of dismissal; on March 8 the employer had given him a renewed warning of dismissal for giving inaccurate information on pricing. When Mr. Chrouser, the telesales manager, had discussed the warning with the claimant on March 8, he had inquired of the claimant why he was not using the bundling pricing tool that would have prevented the problem; at that time the claimant had no explanation as to why he had not been using the tool. When he gave the inaccurate pricing information on March 10, he again was not using the tool that would have prevented the problem. As a result of the repeated problem even after being given the restated warning of removal only two days earlier, the employer determined to discharge the claimant.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's continued provision of inaccurate pricing information after multiple warnings, substantially due to failing to use a standard pricing tool, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits

on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

**DECISION:**

The representative's April 12, 2010 decision (reference 02) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of March 12, 2010. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue and whether the claimant is eligible for a waiver of any overpayment.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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