

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERICKA A RICHEY**  
Claimant

**APPEAL NO. 11A-UI-01771-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CDS GLOBAL INC**  
Employer

**OC: 01/09/11**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 2, 2011 (reference 01) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on March 15, 2011. Claimant participated. Employer participated through Angie Nash and Jill Rasmussen. Employer's Exhibit 1 was admitted to the record.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a customer service representative supervisor since November 22, 2008. She began the employment on November 9, 1998 and was separated from employment on January 9, 2011. She took a supervisor phone call on January 5, 2011 and allegedly argued with the customer on the call. The customer accused her of being rude, condescending, not listening to the problem, and asked to speak to her supervisor, but claimant did not transfer the call. Nash reviewed the call and found the claimant interrupted the customer, talked over them, and did not address the problem. The customer hung up on her. Employer did not play the call recording for claimant, who does not recall such a call. She did recall a customer who wanted a free gift but the employer's records showed that the subscription had not yet been paid for. In her employment history, she had been prohibited from sending a free gift under that scenario. When she asked Manager Cindy Vogel for more techniques about how to handle such a call, Vogel told her only to begin the call by asking an open ended question about how she could help. A recording of the call was not offered as evidence.

Employer issued a corrective action notice to claimant on December 27, 2010 after a December 14 customer complaint that claimant interrupted, talked over them, was rude, and did not address the problem the customer called about—a gift subscription not received. Claimant told the customer the gift cards had been sent but she could not guarantee delivery before

Christmas, since after an order is placed, the customer must allow 7 to 10 calendar days to receive the gift cards. There were informal coaching sessions regarding improper call handling on November 18, 2010 about verbiage, listening, and professionalism; on September 24, 2010 about her role, expectations, customer complaints about abrupt tone, antagonizing customers, and rudeness; on March 16, 2010 about becoming defensive, talking over customers or CSRs who called for assistance; on January 7, 2010 for customer and CSR complaints about call handling, and cherry-picking phone calls assigned to CSRs.

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

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

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 of proof in establishing disqualifying job 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 claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as employer and claimant differed about the quality of the final call prior to the separation and the employer has the burden of proof to establish misconduct in a discharge situation, the employer did not rebut claimant's credible denial of inappropriate call handling and has not met the burden of proof to establish that claimant acted deliberately or negligently after the most recent warning. Employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

**DECISION:**

The February 2, 2011 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw