

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CINDY K WILSON
Claimant

APPEAL NO. 08A-UI-02832-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALORICA
Employer

**OC: 02/17/08 R: 01
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Cindy Wilson filed an appeal from a representative's decision dated March 19, 2008, reference 01, which denied benefits based on her separation from Alorica. After due notice was issued, a hearing was held by telephone on April 7, 2008. Ms. Wilson participated personally. The employer participated by Jodi Heineman, Human Resources Generalist.

ISSUE:

At issue in this matter is whether Ms. Wilson was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Wilson was employed by Alorica from January 29, 2007 until February 20, 2008 as a full-time customer service agent. She was discharged for using profanity at work in violation of a known work rule.

On February 20, Ms. Wilson's supervisor presented her with a monitoring report on which she had received a score of 35 out of a possible 100. She became upset because she lost points for not offering an international feature when she did not know she was required to do so. She raised her voice and stated that it was "fucking ridiculous" and that she was going home. This occurred in the work bay where other agents were situated. The workstations are approximately two feet apart. The supervisor asked to meet with her away from the work area and the two went to an office. Ms. Wilson wrote "fuck this" on the monitoring report and was told that her conduct was not acceptable. She responded by stating that it was her "fucking" paper and that she could do what she wanted with it. She then crumpled the report, threw it in the trash, and left the room. The supervisor followed and advised her that she was being suspended for the remainder of the day. She was discharged later the same day.

In making the decision to discharge, the employer considered the fact that Ms. Wilson had received a written warning on January 4, 2008 for using profanity at work. She became upset

during a call and stated that she was “fucking sick of this shit.” She then removed her headset and left before the end of her shift.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Wilson was discharged for using profanity at work on two occasions in violation of a known work rule. She was put on notice in the warning of January 4, 2008 that profanity would not be tolerated. In spite of the warning, she again used profanity on February 20.

Ms. Wilson performed her job in a bay area among other customer service agents. There was the potential that her language could be heard by customers if agents were on the telephone at the time. As such, her conduct had the potential of negatively impacting customer relations. Ms. Wilson’s use of profanity in a work area on February 20 after being warned about such conduct on January 4 constituted a substantial disregard of the standards she knew the employer expected of her. Although Ms. Wilson denied using profanity on February 20, the administrative law judge found the employer’s hearsay testimony more credible.

The administrative law judge has considered the fact that Ms. Wilson was angry about her monitoring score on February 20 and that she wrote “fuck this” on the monitoring report. Given these factors, the administrative law judge is inclined to believe that she did, in fact, verbalize similar profanity on February 20. For the reasons stated herein, the administrative law judge concludes that substantial misconduct has been established by the evidence. Accordingly, benefits are denied.

DECISION:

The representative’s decision dated March 19, 2008, reference 01, is hereby affirmed. Ms. Wilson was discharged by Alorica for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css