

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LEON JOHNSON**  
Claimant

**APPEAL NO: 13A-UI-13407-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FOCUS SERVICES LLC**  
Employer

**OC: 11/03/13  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's November 26, 2013 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated at the December 30 hearing. Renee Fox, a recruiter, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on February 13, 2013. He worked as a full-time sales agent at the employer's call center. The claimant understood the employer did not allow profanity on the call floor. The claimant knew an employee would be discharged for using profanity on the call floor.

After an October 30 or November 1 call, a customer called in and complained or while monitoring this call, the employer heard the claimant swear while on a call. On October 30 or November 1, the claimant was working at his desk when another employee, J., approached the claimant and told the claimant to stop stalking his cousin. The claimant did not know this employee who was arguing with the claimant. J. physically threatened the claimant and swore at the claimant. When this confrontation started the claimant was on a call with a customer. The claimant put his phone on mute so the customer could not hear J.'s swearing. After employees took J. away, the claimant was very upset. Believing his phone was still on mute, the claimant said to himself that he could not believe this bullshit and what the hell just happened.

After the employer heard the claimant's comments, the employer discharged the claimant on November 4, 2013. The employer discharged him for conducting himself inappropriately when J. confronted him at his desk and for using profanity on the call floor.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 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 law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established justifiable business reasons for discharging the claimant. When the claimant made an inappropriate comment to himself, he believed his phone was still on mute so the customer would not hear J.'s swearing. Based on the unique circumstances of this case, the evidence does not establish that the claimant intentionally violated the employer's policy. The claimant used poor judgment when he was upset after J. swore at him and physically threatened him, but this isolated incident does not rise to the level of work-connected misconduct. As of November 3, 2013, the claimant is qualified to receive benefits.

**DECISION:**

The representative's November 26, 2013 determination (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons. While the claimant used poor judgment after he had been physically threatened, he did commit work-connected misconduct. As of November 3, 2013, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs