

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEYONTA C CARTER
Claimant

APPEAL NO. 10A-UI-14840-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CONSUMER ENTERPRISES LLC
Employer

OC: 09/12/10
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Consumer Enterprises, filed an appeal from a decision dated October 22, 2010, reference 01. The decision allowed benefits to the claimant, Keyonta Carter. After due notice was issued, a hearing was held by telephone conference call on December 8, 2010. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Co-Owner James Shannon.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Keyonta Carter was employed by Consumer Enterprises as a full-time sales representative until September 30, 2010. She received a copy of the employee handbook which set out the company policies. One policy strictly prohibits the use of company equipment for personal use. During the course of her employment she had received three warnings for job performance and two for absenteeism.

Ms. Carter had been laid off for two weeks and returned to work on September 27, 2010. On September 30, 2010, Co-Owner James Shannon was doing a review of her call log and discovered a number of calls made to local numbers. None of Ms. Carter's clients are local. He listened to the calls and discovered she had been phoning friends and relatives to talk with them, had made appointments for personal business, made reservations for herself at hotels and talked to utility companies about her accounts. These calls had occurred over the four days since she returned to work and totaled approximately two hours of time when she was on the clock.

Mr. Shannon confronted the claimant about these calls and she admitted to making them. The employer asked her if she wanted to continue working for the company and abide by the policies. She answered that "maybe someone else could use the job" more than she could. The employer discharged her at that time.

Keyonta Carter has received unemployment benefits since filing a claim with an effective date of September 12, 2010.

REASONING AND CONCLUSIONS OF 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.

Ms. Carter had been provided with a copy of the employee handbook and knew that using company equipment for personal use was prohibited. She violated that policy and used the company phone, during hours when she was being paid to work, for her personal business. It constitutes a form of theft to use the employer's phones and phone lines to this excessive amount, as well as claiming wages for time not worked. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the

overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of October 22, 2010, reference 01, is reversed. Keyonta Carter is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css