

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LORETTA J GUYMON**  
Claimant

**APPEAL NO: 11A-UI-10734-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THOMAS L CARDELLA & ASSOCIATES**  
Employer

**OC: 07/10/11  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's August 3, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because she had been discharged for non disqualifying reasons. The claimant participated in the hearing. David Williams represented the employer. Corey Nemmers, the operations manager, testified 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 in September 2010. She worked as a telephone sales representative. After a co-worker had been discharged for using profanity on the call floor, the employer told the claimant and other employees in early May 2011 they would be discharged if they used profanity on the call floor.

On May 9, a co-worker, A., reported the claimant said asshole on the call floor. A. was the only person who reported this comment. The claimant does not know A. and A. did not sit next to the claimant. After A. made the report, a supervisor, not Nemmers, told the claimant she was suspended because a co-worker reported she had made a profane comment on the call floor. On May 10, D. M., a manager, told the claimant she was discharged because the employer heard her say F\_\_\_ on a recorded call. The claimant denied she said asshole on May 9 and does not recall swearing on a call. The claimant does not even know what date she allegedly said F\_\_\_ on a recorded call.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant's testimony must be given more weight than the employer's unsupported hearsay testimony. Nemmers had no knowledge about a recorded call or that the claimant had been told she had been discharged for saying F\_\_. He understood the employer discharged her after one co-worker reported she had said asshole on May 9, which the claimant denied saying. The claimant did not even know who A. is.

Based on the evidence presented during the hearing, the employer may have had business reasons for discharging the claimant. The evidence does not, however, establish that the claimant committed work-connected misconduct. As of July 10, 2011, the claimant is qualified to receive benefits.

**DECISION:**

The representative's August 3, 2011 determination (reference 01) is affirmed. The employer discharged the claimant, but did not establish that she committed work-connected misconduct. As of July 10, 2011, the claimant is qualified to receive benefits, provided she 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