

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHARLES A RICHARDS
Claimant

QWEST CORPORATION
Employer

APPEAL 17A-UI-05086-DB

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/16/17
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the May 11, 2017 (reference 02) unemployment insurance decision that denied benefits based upon his separation from employment. The parties were properly notified of the hearing. An in-person hearing was held on May 31, 2017. The claimant, Charles A. Richards, participated personally. The employer, Qwest Corporation, participated by telephone. The employer was represented by Thomas Kuiper and participated through witness Robert Grainger. Claimant's Exhibit A - D were admitted into evidence.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a repair service attendant in an in-bound call center. He was employed from February 15, 2016 until April 18, 2017. Claimant's job duties included assisting customers with problems they were having with their internet and internet based television services. Robert Grainger was claimant's immediate supervisor.

The final incident that led to claimant's discharge occurred on March 24, 2017. The matter came to Mr. Grainger's attention when he was reviewing telephone call recordings as part of his supervisory job duties. The telephone call was between claimant and a customer of the company. See Exhibit A. After taking the call claimant began troubleshooting with the customer. See Exhibit A. Claimant was unable to assist the customer because he felt that he could not understand him due to the customer's thick accent and that the customer was unable to understand what claimant was saying. He asked the customer for his permission to transfer him to another help desk, which the customer agreed to. See Exhibit A.

After the telephone call, claimant put a note in the employer's computer system that stated the customer "had an opaque use of English" and the note was available for others to read if they went into this customer's history. The claimant's intent of putting the note on the computer system was to indicate that he was unable to communicate with the customer. The employer

indicated that claimant had violated the employer's written Code of Conduct and Unifying Principles regarding respect of customers in his actions on March 24, 2017 and discharged him because of it.

During the hearing, Mr. Grainger testified that claimant transferred the customer without their knowledge and failed to troubleshoot with the customer. However, based on Exhibit A, this was clearly not the case.

Claimant had received previous written discipline on February 16, 2017 for an incident where the employer believed claimant was being untruthful regarding a threat, putting a customer on hold for over 30 minutes, and was threatening and intimidating to a co-worker. See Exhibit B. Claimant indicated that he felt the customer was threatening based upon the tone of voice and profane language used during the call. See Exhibit D. Claimant had concerns that a technician who may be dispatched to the home may be injured. Claimant became upset with a co-worker when he refused to believe that the incident he reported was an actual threat to a dispatcher.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed.

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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.

Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. 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. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

The decision in this case rests, at least in part, upon the credibility of the parties. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* The administrative law judge concludes that the claimant's testimony is more credible than that of Mr. Grainger. Mr. Grainger's testimony that claimant transferred the customer without knowledge and failed to troubleshoot with the customer is inconsistent with the transcript of the call.

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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability.

Lee v. Employment Appeal Bd., 616 N.W.2d 661 (Iowa 2000). Reoccurring acts of negligence by an employee would probably be described by most employers as in disregard of their interests. *Greenwell v Emp't Appeal Bd.*, No. 15-0154 (Iowa Ct. App. March 23, 2016). The misconduct legal standard requires more than reoccurring acts of negligence in disregard of the employer's interests. *Id.*

There was no evidence presented that any of the incidents leading to claimant's discharge were in violation of any policy, constituted a material breach of his duties and obligations to his employer, or disregarded any standards of behavior that the employer put in place for the claimant. Claimant's behavior does not rise to the level of misconduct.

The employer failed to meet its burden of proof in establishing disqualifying job-related misconduct. As such, benefits are allowed.

DECISION:

The May 11, 2017 (reference 02) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The benefits claimed and withheld shall be paid, provided he is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs