

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TAWNIE B BELL**  
Claimant

**APPEAL NO: 12A-UI-05073-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND COMMUNICATIONS GROUP**  
Employer

**OC: 04/08/12**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's April 30, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Amanda Holmes, the assistant human resource director, Mary Gonnerman and Shannon Bushman, the claimant's supervisor, 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 previously worked for the employer in 2006. In 2006, the claimant worked in sales or in the same capacity that the employer rehired her. The employer hired the claimant in March 2011 to work full time as a display advertising representative in the construction division. The claimant understood when she was hired, the employer expected her to reach certain sales goals. The claimant also understood that the employer wanted her to work from a file that consisted of primarily dead leads. The leads from the claimant's file were for businesses that it was very hard to sell ads to.

When the employer gave the claimant a performance evaluation in early November, the claimant understood her job performance was not satisfactory. She did not have any understanding her job was in jeopardy. The employer told the claimant she needed to increase the time she spent on the phone trying to sell ads. Even though a trainer monitored some for the claimant's calls to help her make sales, the claimant wanted additional training. The claimant wanted Internet training. Internet had been added since the claimant had worked previously worked for the employer in 2006. The claimant spent a great deal of time finding phone numbers for the leads the employer gave her. The claimant understood that after the November evaluation, she would have another performance evaluation in three months.

In mid-March Bushman had a meeting and talked to all employees in the constructions division. At the meeting, employees were told everyone's production was unsatisfactory and they all needed to increase the time they were on the phone. After the meeting, the claimant made an effort to be on the phone an hour a day. After the meeting until April 6, the claimant was on the phone four days for least an hour.

When Bushman evaluated the claimant's work performance in early April 2012, she discovered the claimant had only sold 11 percent of her yearly sales goal. The employer expected her to have sold 25 percent of her yearly sales goal. The employer also noted that the claimant's number of phone calls and length of calls was significantly lower than the average of other sales employees throughout the company.

Since the employer had not been satisfied with the claimant's job performance since she had been rehired, the employer discharged her on April 6, 2012, for continued lack of productivity or unsatisfactory job performance.

### **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 employer was not satisfied with the claimant's work performance since she had been rehired. When the employer gave the claimant an evaluation in November, the claimant knew the employer was not satisfied with her work performance. The employer talked to the claimant about increasing the amount of time she was on the phone in an attempt to improve her sales. The employer also gave the claimant a sales goal. Based on comments during the November evaluation, the claimant had no understanding her job was in jeopardy. Even though the claimant sold some ads, she did not meet her sales goal objective at end of the first quarter of 2012. The employer was not satisfied with the work performance of the construction department employees. The sales this department generated was not acceptable and all employees were told to increase their phone or line time.

The employer asserted the claimant was more concerned about her smoke breaks and what she would have to eat at lunch than selling ads. This assertion is not supported by the facts.

Usually, the claimant did not take a lunch break and if she did, she worked longer in the afternoon.

Even though the employer gave the claimant information about her phone time, it was the employer's responsibility to warn the claimant her job was in jeopardy. The only time the employer gave the claimant any warning was during the mid-March meeting when all employees in the construction department learned they were under performing and their work performance and phone time were not acceptable. The claimant may not have worked as enthusiastically as the employer wanted her to and clearly did not increase her phone time to meet the employer's standard, but the facts do not establish the claimant intentionally and substantially failed to perform her work satisfactorily. The claimant believed she worked to the best of ability.

The employer discharged the claimant for business reasons, but the facts do not establish the claimant commit work-connected misconduct. As of April 8, 2012, the claimant is qualified to receive benefits.

**DECISION:**

The representative's April 30, 2012, determination (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of April 8, 2012, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

---

Debra L. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

dlw/css