

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAMELA RUMLER
Claimant

APPEAL NO: 12A-UI-13606-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES OF IOWA
Employer

OC: 10-07-12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 5, 2012, reference 03, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 10, 2012. The claimant participated in the hearing. Turkessa Newsone, Human Resources Generalist; Marcie Ordaz, Operations Manager; and Amanda Kimble, Ready Replacement, participated in the hearing on behalf of the employer. Employer's Exhibits One, Two and Three, were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time customer service representative for Apac Customer Services of Iowa from October 13, 2008 to October 5, 2012. She was discharged for falsifying data on three calls July 11, August 20 and October 5, 2012.

On July 11, 2012, the claimant received a first and final written warning for indicating a customer stated he would use the client's services over the next six months when he actually said, "I don't know" (Employer's Exhibit One). If a customer provides an answer not contained on the questionnaire the customer service representative (CSR) is expected to provide other options and if she does not receive an answer at that time she is to end the call. On August 20, 2012, the claimant received a first and final written warning reinforced because she was observed falsifying documentation in marking that the customer said he did not ship with other carriers but the claimant had not asked that question of the customer (Employer's Exhibit Two). The claimant's employment was terminated October 5, 2012, after she processed a call as a sale but did not complete the call, stopping before asking all questions and indicating the call was a completed survey.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proving disqualifying misconduct. 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 substantial and 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 claimant averaged 50 to 70 calls per day. Consequently, she would have taken at least 600 calls between July 11, 2012, and October 5, 2012, and is accused of falsifying data on three of those calls. What the employer deems "falsifications" could also be viewed as simple errors. The employer's system of payment did not allow the claimant to profit depending on how she classified her calls and she had no financial incentive to falsify any documentation. Under these circumstances, the administrative law judge concludes the claimant's actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The November 5, 2012, reference 03, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css