

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LORETTA J BARNES
Claimant

THOMAS L CARDELLA & ASSOCIATES
Employer

APPEAL NO. 14A-UI-10618-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/14/14
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 1, 2014, reference 01, which concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 30, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Barbara Toney participated in the hearing on behalf of the employer with a witness, Dylan Hutton. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a customer service agent from April 12, 2012 to September 15, 2014. She understood that under the employer's work rules, employees were to provide accurate information to customers. The claimant was working on the Verizon FiOS account; which involves phone, television, and internet services.

The claimant had received a written warning on August 23, 2014 after telling a customer that he would have to speak to a technician about whether additional wiring would need to be done to install FiOS service. This advice was correct, but it was alleged the claimant had told the customer something inaccurately. This allegation has not been proven.

Sometime during the week of September 8 a customer asked the claimant about early terminations fees for converting to FiOS service. The claimant responded that there were no early termination fees (ETFs) on "our end." The claimant neglected to inform the customer that she needed to contact her current provider regarding any ETFs. The customer later complained to Verizon about the information the claimant provided when he found out his current provider was going to charge him with a ETF.

On September 15, 2014 the employer discharged the claimant due to the conversation with the customer during the week of September 8, which was considered provided false information, and considering the recent warning on August 23.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Iowa Code § 96.6-2; Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified credibly and consistently. The employer's witness was unknowledgeable about the facts regarding the warning and the date of the final incident. He could not remember participating in the fact-finding interview even though it was documented in the Agency records that he did. The claimant's testimony is entitled to greater weight. The employer has failed to meet its burden of proof.

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. At most, the record shows an isolated incident of negligence not willful and substantial misconduct.

DECISION:

The unemployment insurance decision dated October 1, 2014, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

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