

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JASON P CONNETT
1215 HEROLD AVE
DES MOINES IA 50315

QWEST CORPORATION
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 05A-UI-11681-JTT
OC: 10/23/05 R: 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct
Section 93.7 – Recovery of Overpayment

STATEMENT OF THE CASE:

Qwest filed a timely appeal from the November 7, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 2, 2005. Claimant Jason Connett did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Mara Benjamin of Employers Unity represented the employer and presented testimony through Telesales Manager Jason Douglas. Exhibits One through Eight were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jason Connett was employed by Qwest as a full-time telephone sales and service

representative from February 19, 2001 until October 21, 2005, when Telesales Manager Jason Douglas discharged him for misconduct.

The final incident that prompted the discharge came to the employer's attention on October 18, 2005, when the employer reviewed customer calls handled by Mr. Connett on October 17. In three of five reviewed calls, Mr. Connett muted his telephone for an extended period of time. This led the customer to believe that Mr. Connett had disconnected the call and the customer then hung up at their end of the call. When the employer confronted Mr. Connett about his behavior during the three telephone calls, Mr. Connett indicated that he had been trying to stretch the length of the telephone calls to make it appear that he was fulfilling his obligation to suggestively sell additional products and/or services to the customer when he was, in fact, not interacting with the customer. The employer's monitoring system began to record the first call after it had started, as Mr. Connett stated to the customer, "You want my help now, huh?" Mr. Connett then muted his phone for several minutes, during which time the customer can be heard saying, "Hello? Hello?" Several minutes into the second problem call, Mr. Connett muted his phone for six to seven minutes, during which time the customer was saying, "Hello? Hello?" The customer eventually hung up and had to call back for assistance. During the third problem call, the customer had merely called to request a copy of his/her bill. Qwest's computer network is set up such that a copy of a customer's bill can be generated in sixty seconds. Mr. Connett muted his phone for eight minutes. The customer eventually hung up. Mr. Connett had been previously reprimanded for similar behavior on three occasions.

Mr. Connett established a claim for benefits that was effective October 23, 2005, and has received benefits totaling \$648.00.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Connett was discharged for misconduct in connection with the employment. It does.

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).

Since the claimant was discharged, the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992). Past acts and warnings can be used to determine the magnitude of the current act of misconduct, but a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8).

The evidence in the record establishes that Mr. Connett engaged in willful and wanton disregard of the employer's interests by intentionally failing to properly assist customers in a timely fashion, by intentionally failing to perform the sales component of his duties, and by intentionally manipulating the employer's call monitoring system to deceive the employer into believe he was completing his duties. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Connett was discharged for misconduct. Accordingly, Mr. Connett is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Connett.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The benefits Mr. Connett has received constitute an overpayment that the law requires Mr. Connett to repay.

DECISION:

The Agency representative's November 7, 2005, reference 01, decision is reversed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The claimant is overpaid \$648.00.

jt/kjw