

**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**

**STEVEN CLAIR  
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ANKENY IA 50023-1249**

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

**Appeal Number: 06A-UI-01199-H2T  
OC: 01-08-06 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 27, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 16, 2006. The claimant did participate. The employer did participate through Greg Duncan, Telesales Manager, and Jim Sheffield, Equal Opportunity Director, and was represented by Sandy Fitch of TALX UC eXpress. Employer's Exhibit One was received.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a Sales Manager full time beginning April 28, 2003 through

January 5, 2006, when he was discharged. The claimant was discharged after his employer discovered that he had engaged in a romantic/sexual relationship with an employee that he directly supervised. The subordinate employee filed a complaint after the relationship with Mr. Clair ended when she believed she was being treated in a disparate manner and in danger of losing her job as a result of their previous relationship. When questioned by the employer the claimant initially denied the sexual nature of the relationship with the subordinate but did eventually admit that he had "messed up" and been sexually involved with a woman he directly supervised. The claimant was discharged for initially lying about the relationship and trying to cover it up, and for engaging in an inappropriate relationship with someone he directly supervised.

The complaining employee indicated to Mr. Sheffield that Mr. Clair had told her that if their relationship was discovered, he would be fired. She believed he was trying to treat her more harshly in order to protect his own position in the company. As an example, the subordinate employee would text message Mr. Clair with romantic or sexually suggestive messages while their affair was ongoing. After the relationship ended she was reprimanded when she used the text message to inquire about work issues. The subordinate employee was treated differently by the claimant Mr. Clair after their sexual relationship ended.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

The claimant knew that the sexual relationship with an employee he directly supervised was wrong when he told the woman that he would probably be fired if their relationship were discovered. Additionally, the claimant lied to his superiors to try and keep the relationship from becoming public knowledge. His lie indicates he was trying to prevent the employer from discovering he engaged in conduct that violated the employer's code of conduct. The claimant knew or should have known that engaging in a sexual relationship with a person he directly supervised would not be conduct in the employer's best interest. The claimant's actions constitute disqualifying misconduct. The employer's evidence does establish that the claimant deliberately and intentionally acted in a manner he knew to be contrary to the employer's interests or standards. There was a wanton or willful disregard of the employer's standards. In short, substantial misconduct has been established by the evidence. Benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

#### DECISION:

The January 27, 2006, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as 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 claimant is overpaid benefits in the amount of \$1,296.00.

tkh/kjw