

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SEAN MCCUBBIN

Claimant

APPEAL NO. 09A-UI-15780-C

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION

Employer

OC: 09/20/09

Claimant: Appellant (2)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Sean McCubbin filed an appeal from a representative's decision dated October 14, 2009, reference 01, which denied benefits based on his separation from Qwest Corporation. After due notice was issued, a hearing was held on November 12, 2009 in Des Moines, Iowa. Mr. McCubbin participated personally and was represented by Laurie Soroka, Communications Workers of America. The employer participated by Anna Rodriguez, Team Leader, and Svetlana Van Wyk, Telesales Manager. The employer was represented by Steve Zaks of Barnett Associates, who participated by telephone. Exhibit One was admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. McCubbin was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. McCubbin was employed by Qwest from June 19, 2001 until September 24, 2009. He was employed full time as a sales and service consultant. His work involved speaking with customers who called in for assistance. Four of his calls were monitored remotely each month. There were also four side-by-side observations of his work each month. Mr. McCubbin's first disciplinary action was on July 16, 2009 when he was given a written warning of dismissal.

The warning of dismissal was prompted by a call received by Mr. McCubbin on July 7. The customer called to find out how a long distance call appeared on her bill. He explained why the call may have appeared on the bill but proceeded to argue with her about whether she would receive \$.20 credit for the call. Mr. McCubbin was coached on August 27, 2009 because of calls he received on August 17, August 24, and August 25. The customers complained that he was rude and unwilling to help. The employer felt he was argumentative and not listening to customers. The employer did not feel he took ownership of his conduct.

The final act that triggered the discharge occurred on September 9, 2009. The customer called to question why payments he submitted were being refunded to him on an account that had been closed. Mr. McCubbin explained that an early termination penalty was assessed after the account was closed and that, after credit for unused service, a balance of \$93.96 remained. He also explained that after the regular account was closed, the unpaid balance was assigned a new account number. He further explained that, because the payments the customer made in response to the billings was to the old account, the amounts he submitted were refunded because the account no longer existed.

The customer became agitated because he had not been told during previous calls to Qwest that the payment should be directed to a different account number or even that there was a new number. Mr. McCubbin explained that the new account number was on the billings sent to the customer after the regular account was closed. The customer was becoming increasingly agitated because he felt he should have been told sooner that there was a new account number. The customer would interrupt Mr. McCubbin as he attempted to explain what had occurred with the account. There also were at least two occasions when Mr. McCubbin attempted to talk above the customer. The customer ended the call by hanging up on Mr. McCubbin.

Mr. McCubbin's manager overheard a portion of his call with the customer but did not intercede to take over the call. Approximately three days later, the manager listened to a recording of the call. The call was not discussed with Mr. McCubbin until September 21. He was discharged on September 24, 2009.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer's burden included establishing that the discharge was predicated on a current act that constituted misconduct within the meaning of the law. 871 IAC 24.32(8). Mr. McCubbin was discharged for what the employer considered customer abuse. The administrative law judge did not have the benefit of listening to recordings of the calls that prompted the July 16, 2009 warning of dismissal or the August 27, 2009 coaching. After listening to the recording of the September 9 call, the administrative law judge was not persuaded that Mr. McCubbin was abusive to the customer.

The customer began getting agitated when told there was a new account number to which his payments should have been directed. It appears that he was agitated because he felt Qwest should have informed him during prior calls that there was a new number. He became more agitated when Mr. McCubbin pointed out that the number was on the billings he received. Although there were a couple of times when Mr. McCubbin attempted to talk over the customer, he was not doing so to be argumentative with the customer. It appears to the administrative law judge that he was attempting to de-escalate the situation so he could assist the customer. It is noteworthy that the manager who overheard part of the conversation did not observe anything about Mr. McCubbin's conduct that warranted taking over the call.

The administrative law judge concludes that Mr. McCubbin's conduct of September 9 did not constitute a deliberate or intentional disregard of the standards he knew the employer expected of him. He was making a good-faith effort to deal with an angry customer. While the employer may have had good cause to discharge him, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits.

Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated October 14, 2009, reference 01, is hereby reversed. Mr. McCubbin was discharged by Qwest but disqualifying misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css