

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN GLOWACKI

Claimant

APPEAL NO: 12A-UI-01026-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES INC

Employer

OC: 07-31-11

Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 12, 2012, reference 06, 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 February 22, 2012. The claimant participated in the hearing. Turkessa Newsone, human resources generalist, and Marcie Ordaz, operations manager, participated in the hearing on behalf of the employer.

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 from August 10, 2011 to December 18, 2011. The client's customer is Sirius XM Radio. He was discharged for quality assurance issues that affected his save rate and, ultimately, his bonus from the customer. On December 13, 2011, a quality assurance employee was sitting near the claimant and overheard part of his conversations with at least three Sirius customers. During one call, the claimant offered a suspension to the subscriber, which would be dispositioned as a save rather than a cancellation of service. Suspensions are rarely offered, and under limited circumstances, and the claimant offered this suspension inappropriately. On another call, the claimant made an offer of credit, which was a violation because the subscriber had already taken advantage of an offer of credit. On the third call, the subscriber deactivated her account and when the claimant reentered the call screen, he removed the deactivation and made the account inactive, which did not impact his save rate. Because the claimant had an unusually high number of offers of suspension when the quality assurance employee was sitting next to him, she wrote the account numbers down and investigated. The claimant was placed on investigative leave December 13, 2011, and his employment was terminated December 18, 2011, because the employer believed the claimant was fraudulently adding to his save totals. The employer believes the claimant received previous disciplinary actions but could not access those warnings because the file had been closed.

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 adequately denied knowingly violating any of the employer's policies. While he did not deny that these situations occurred, he was not aware they were policy violations or were inappropriate and could cost him his job. The employer could not provide any previous warnings issued to the claimant about any of these issues or demonstrate that the claimant knew his job was in jeopardy. Consequently, under these circumstances, the administrative law judge must conclude the employer has not met its burden of proving that the claimant's actions rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The January 12, 2012, reference 06, 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/kjw