

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANETTE R MORSE
Claimant

APPEAL NO: 07A-UI-10587-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

OC: 10/21/07 R: 02
Claimant: Respondent (1)

Section 96.5-2-a- Discharge

STATEMENT OF THE CASE:

Qwest Corporation (employer) appealed a representative's November 8, 2007 decision (reference 01) that concluded Danette R. Morse (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 3, 2007. The claimant participated in the hearing. Steve Zaks represented the employer. Debra Thompson, the tele-sales manager, and Lisa Griffiths appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 28, 2003. The claimant worked as a full-time sales and services consultant. Thompson had been her supervisor since May 2007. Prior to August 14, the claimant's job was not in jeopardy. On June 28, 2007, Thompson saw the claimant talking on her cell phone when she had a customer on hold. Thompson told the claimant she could not do this because it amounted to gross customer abuse. There were no problems of a similar nature after June 28.

In early August 2007, the employer changed its phone system. After the change, the claimant reported problems with her headset. The employer investigated and resolved this issue to the claimant's satisfaction.

The employer's quality control department discovered the claimant had placed one customer on August 14, 15 and 16 on hold or on mute for an extended time in violation of the employer's code of conduct. In each case, the customer waited over five minutes before hanging up because the claimant did not say anything to them or let them know she was still working on the

issue they had called about. For every call the claimant handles, she keeps a record of what has happened.

Thompson did not learn about problems with the claimant's calls in mid-August until she returned from vacation on August 20, 2007. The employer did not say anything to the claimant about these calls because she went on short-term disability on August 17, 2007. When the claimant returned from the short-term disability on October 23, 2007, the employer played the recording of each of these three calls and asked for the claimant's explanation. The claimant did not have the paperwork she completed for these calls, which may have helped her explain what had happened. The claimant told the employer she must have had a phone problem that she had not known about. The employer did not have any report of phone problems on any of these days.

The employer concluded the claimant violated the employer's code of conduct by putting three customers on hold for an extended time until the customer became frustrated and hung up. Even though the claimant had not previously received any warnings for violating the employer's code of conduct or for putting customers on hold for an extended time, the employer discharged the claimant on October 23 for the August 14, 15 and 16 calls. The employer considered the three calls an example of gross customer abuse.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The employer learned about the August 14, 15 and 16 problem phone calls on August 20. Since the claimant was on short-term disability August 17 through October 23, the employer did not contact her to let her know there was a problem with three calls, one on each day. When the claimant returned to work on October 23, the employer had the claimant listen to each phone call and asked her to explain what happened. The claimant came up with a logical explanation that the employer dismissed because there had not been any reports of a problem.

However, if the claimant did not know there was a problem with her phone or headset again, there was no reason for her to report a problem on August 14, 15 or 16. Since the claimant worked for the employer since 2003 and there had not been a problem of a similar nature before, the evidence does not establish that the claimant intentionally violated the employer's code of conduct in mid-August. Additionally, the incidents for which the claimant was discharged are not current acts for unemployment insurance purposes. The employer established business reasons for discharging the claimant. A preponderance of the evidence does not establish that the claimant intentionally violated the employer's code of conduct. Therefore, the evidence does not show that the claimant committed work-connected misconduct. As a result, the claimant is qualified to receive unemployment insurance benefits as of October 21, 2007.

DECISION:

The representative's November 8, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of October 21, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs