

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

JEN TEGLER
511 – 6TH ST SE
DYERSVILLE IA 52040

APAC CUSTOMER SERVICES INC
c/o FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

ATTORNEY NATALIA BLASKOVICH
IOWA LEGAL AID
799 MAIN ST STE 280
DUBUQUE IA 52001

Appeal Number: 05A-UI-00961-BT
OC: 12/26/04 R: 04
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Jen Tegeler (claimant) appealed an unemployment insurance decision dated January 21, 2005, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Apac Customer Services, Inc. (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 16, 2005. The claimant participated in the hearing with Attorney Natalia Blaskovich and Apac employee Joy Blackburn. The employer participated through Rose Walton, Administrative Assistant, and Supervisors Anna Mae Hardin and Dena Roethler.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time insurance agent telephone sales representative from July 1998 through December 30, 2004. The claimant was discharged for using profanity while on the call floor on December 29, 2004. The employer's policy prohibits the use of profanity on the call floor and provides that a violation of this policy results in immediate termination. On the afternoon of December 29, 2004, the claimant was using her cellular telephone while on the call floor even though she was logged in on her computer screen and was supposed to be taking work calls. A supervisor heard her say to the person on the cell phone that "they're a bunch of ignorant bitches," apparently referring to female members of management in the Dubuque Center. When her supervisor told her she could not use the cell phone while working, the claimant argued with her supervisor. The claimant got off the cell phone and then asked her supervisor if she was "happy" that her "friend's son died?" Another supervisor directed the claimant to log in to begin verification and the claimant refused even though she was compensated for that additional duty. The claimant had received seven disciplinary warnings since August 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code Section 96.5-2-a.

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 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 claimant was discharged for using profanity while on the call floor on December 29, 2004, which was a violation of policy. The claimant was aware of the employer's policy prohibiting profanity while on the call floor. She denies remembering whether or not she used profanity that night but does remember that her supervisor did not say anything to her about using profanity. In addition to the claimant's use of profanity, her conduct was insubordinate and offensive when she asked her supervisor if the supervisor was "happy" that her friend's grandson had died. She was also insubordinate when she refused a supervisor's directive to log in for verification. The claimant violated additional policies that night by using her cellular telephone while on the call floor and while logged in to her computer.

The claimant had a co-worker testify on her behalf but the co-worker appeared to be overly biased towards the claimant. The witness claimed she uses profanity and that she had never heard the claimant use profanity. The co-worker believed the claimant was really discharged because on December 29, 2004, she (the co-worker) made a statement that included the words "ignorant witches." On cross-examination however, the witness admitted she was not even working at the time of the incident in question. The claimant's and her co-worker's testimony that profanity is tolerated by the employer is not found reliable. The employer has met its burden and the claimant's actions on December 29, 2004 meet the definition of work-connected misconduct. Benefits are denied.

DECISION:

The unemployment insurance decision dated January 21, 2005, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

sdb/s