

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**NANCY A WALTERS**

Claimant

**APPEAL 17A-UI-05524-JP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EGS CUSTOMER CARE INC**

Employer

**OC: 04/23/17**

**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 17, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 19, 2017. Claimant participated. Employer participated through human resources generalist Turkessa Newsone. Official notice was taken of the administrative record, including claimant's wage history and benefit payment history, with no objection.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a customer service representative from August 12, 2013, and was separated from employment on April 25, 2017, when she was discharged.

The employer has a written policy that any intentional act relating to work is grounds for progressive disciplinary, up to and including discharge. Claimant was aware of the policy. Claimant had training on how to handle difficult callers. The employer has a written SOP (standard of practice) on how to deal with upset callers. The employer does inform employees that if they hang-up on callers, they will be discharged.

On April 24, 2017, approximately fourteen minutes into a phone call, the caller requested to speak to a supervisor. Normally when a caller asks to speak to a supervisor, the customer service representative is supposed to transfer the call to a resolution specialist. Claimant attempted to transfer the caller to a resolution specialist, but instead she accidentally selected the red phone icon and disconnected the caller. Claimant did not purposefully disconnect the caller; she accidentally disconnected the caller when she was trying to transfer the caller to a resolution specialist. Claimant was aware that the caller was disconnected. Sometimes claimant has the phone number to call the caller back, but claimant did not check to see if the caller's number was available. Claimant did not inform the employer about the disconnected call. Claimant

then logged herself out for lunch. During this phone call, claimant was being live monitored by a team lead (Michelle). Team leads are required to perform live monitors each day. During a live monitor, the team lead listens to the phone call and watches the customer service representative's computer screen. Michelle brought the incident to Ms. Newsone's attention. Ms. Newsone reviewed the call and the screens to verify that claimant did disconnect the caller.

On April 25, 2017, the employer met with claimant about the incident. The employer had claimant listen to the call from April 24, 2017. The employer told claimant she was discharged for disconnecting the caller on April 24, 2017.

Claimant did not have any prior disciplinary warnings for disconnecting a caller. On September 28, 2016, the employer gave claimant a final written warning for being rude to a customer. The call was disconnected, but the employer could not determine whether the caller or claimant disconnected the call. Claimant testified that the caller hung-up. Claimant did not think she was rude to the caller. Claimant was warned her job was in jeopardy.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

**(4) Report required.** The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

"[T]he definition of misconduct requires more than a 'disregard' it requires a '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.'" *Greenwell v. E.A.B. and Professional Transportation, Inc.*, No. 15-0154 (Iowa Ct. App. filed March 23, 2016) (citing Iowa Admin. Code r. 871-24.32(1)(a)) (emphasis in original). "Reoccurring acts of negligence by an employee would probably be described by most employers as in disregard of their interests." *Id.* "The misconduct legal standard requires more than reoccurring acts of negligence in disregard of the employer's interests." *Id.* "[T]he acts [should constitute] an 'intentional and substantial' disregard of the employer's interests[.]" *Id.* Claimant provided credible, first-hand testimony, that she accidentally disconnected a caller when she was trying to transfer it to a resolution specialist on April 24, 2017. The employer failed to show that on April 24, 2017, claimant's intentionally disconnected the caller. Benefits are allowed.

Furthermore, the conduct for which claimant was discharged was merely an isolated incident of poor judgment and inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Benefits are allowed.

**DECISION:**

The May 17, 2017, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs