

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY A OBERHEIM
Claimant

APPEAL NO: 12A-UI-00817-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOCUS SERVICES LLC
Employer

OC: 12/11/11
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's January 12, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated in the hearing. Chris Hislop, the human resource director, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The employer rehired the claimant to work as a full-time telemarketer in March 2011. When the claimant was rehired, the employer's client was Qwest. Century Link took over Qwest and became the employer's client in August.

During her employment, several supervisors told the claimant she could override a deposit for a customer by putting in all nine's for the customer's social security number. No one told the claimant this policy changed after Century Link became the client.

In December 2011, the claimant talked to an older customer. The claimant changed her social security number to all 9's so the customer did not have to pay a deposit to receive services right away. The claimant and other employees had been doing this throughout the course of the claimant's employment, even after August 2011.

The claimant's job was not jeopardy before December 14, 2011. The claimant did not know Century Link did not allow employees to change a customer's social security number to all 9's or avoid paying a deposit. After Century Link discovered this incident on December 14 and reported it to the employer, the employer considered this a fraudulent transaction where the claimant received credit for a sale she had not made. The employer discharged her for a fraudulent transaction.

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 § 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).

The employer established justifiable business reasons for discharging the claimant. The client considered the claimant's actions fraudulent and wanted her discharged. Another employee was also discharged for the same infraction.

The facts indicate the claimant did not know about this policy and had been told by supervisors even after Century Link became the client instead of Qwest that telemarketers were allowed to change a customer's social security number to all 9's under the situation the claimant had with this particular customer. The claimant had done the same thing in the past and nothing was said to her. Even though the claimant violated a policy, the evidence establishes she did not know Century Link did not allow telemarketers to do this. The facts do not establish that she knowingly violated the employer's policy or that she substantially disregarded the employer's interest. The claimant did not commit work-connected misconduct. As of December 11, 2011 the claimant is qualified to receive benefits.

DECISION:

The representative's January 12, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of December 11, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw