

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSICA L CECAK**  
Claimant

**APPEAL NO: 12A-UI-01301-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THOMAS L CARDELLA & ASSOCIATES INC**  
Employer

**OC: 12/25/11  
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's January 25, 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 nondisqualifying reasons. The claimant did not respond to the hearing notice or participate in the hearing. Tom Kuiper represented the employer. Jason Eisheid, the center director, Jena Juchems, the operations director, and Stephanie Peters appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. Based on the evidence, the employer's arguments, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer in mid-September 2011 as a full-time telephone sales representative. When she started working, the employer informed her about the employer's policies. One policy informs employees they can be immediately terminated if they use profanity near any open line on the call floor. (Employer Exhibit One.).

On December 27, the claimant was on Juchems' phone to talk to her boyfriend or spouse. The claimant was upset with the person she was talking to. The claimant said, F\_\_\_\_, and then hung up on the person she had been talking to. When the claimant swore, she was on the call floor and other sales representatives were on their phones with customers.

The employer talked to the claimant. She admitted she swore on the call floor and understood the employer's policy. The employer discharged the claimant for this incident.

**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.

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 claimant knew and understood the policy and consequences if she or another employee used profanity on the call floor. Without the claimant's testimony to explain her actions, the employer established the claimant was discharged for work-connected misconduct. As of December 25, 2011, the claimant is not qualified to receive benefits.

**DECISION:**

The representative's January 25, 2012 determination (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of December 25, 2011. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs