

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JODI L COOPER**  
Claimant

**APPEAL NO: 14R-UI-04754-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADS-R-US INC**  
Employer

**OC: 01/12/14**  
**Claimant: Appellant (1/R)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's February 11, 2014 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. A hearing was initially held on April 2, 2014, before another administrative law judge. The claimant participated at the April 2 hearing, but the employer did not. Based on the claimant's testimony, the administrative law judge reversed the February 11, 2014 determination and held the claimant qualified to receive benefits. See decision for appeal 14A-UI-02066.

The employer appealed this decision to the Employment Appeal Board. The Employment Appeal Board remanded this matter to the Appeals Bureau for a new hearing.

On June 26, 2014, another hearing was held. The claimant participated at this hearing. Lana Schippers, the president, appeared on the employer's behalf. At the beginning of the hearing, the claimant asserted she wanted her daughter at the hearing because she had been at the April 2 hearing. The claimant's daughter did not testify at the April 2 hearing. The claimant did not request a subpoena because she does not know where her daughter currently lives and does not have a phone number for her. The hearing took place as scheduled.

Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes 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 February 2000. The claimant was scheduled to work an average of 30 hours a week as a telemarketing sales employee. During the last months of her employment, the claimant chose to work an average of 12 hours a week. The claimant received and the employer told employees during meetings that if they were unable to

work as scheduled they were to call or send Schippers a text message. The employer's policy informs employees that if they do not call or work as scheduled for three consecutive days, the employer considers the employee to have voluntarily quit.

During her employment, the employer gave the claimant written warnings for attendance issues. The most recent warning the employer gave the claimant was in late March 2013. The employer told the claimant then she had to work at least 26 hours a week. Even though the claimant reported to work an average of 12 hours a week in November and December 2013, the employer did not give her a written warning. The employer knew the claimant was dealing with personal issues and tried to help her.

The claimant was scheduled to start working at 9 a.m. On January 6, the claimant went to a convenience store around 6:30 a.m. to get a money order to pay a utility bill. At the convenience store, she discovered she had two flat tires. The claimant does not have a cell phone and borrowed a phone to call her daughter. The claimant asked her daughter to call someone to pick her up and have someone change her tires. The claimant's daughter made arrangements to have the claimant picked up from the convenience store. The claimant hoped she would be able to get her flat tires changed so she could get to work. The claimant was unable to get her flat tires changed on January 6. The claimant did not report to work on January 6.

The employer understood the claimant did not have a phone. When the claimant did not call or report to work on January 6, the employer sent the claimant's daughter a text message. The claimant's daughter did not respond to the employer's text. The claimant had her flat tires changed by Tuesday, January 7. She did not call or report to work on January 7, because she was busy getting paperwork from the vet to take to Animal Reuse League to get her dog back. The claimant did not return to her home until early afternoon. The claimant's daughter did not tell the claimant that Schippers had sent her a text message on January 7 asking that the claimant call her. The claimant understood her daughter had called Schippers on January 7 to let her know the claimant would not be at work. The claimant's daughter did not contact Schippers on January 7.

When the claimant did not report to work on January 8, the employer sent her daughter a text shortly after 10 a.m. asking if the claimant was all right since Schippers had not heard from her that week. This time the claimant's daughter responded and informed Schippers that the claimant's alarm had not gone off. The claimant's daughter indicated she had just woken up the claimant and the claimant would be coming to work. The claimant came to work around noon on January 8.

After the claimant arrived at work, she noticed that a duster or some cleaning supplies she had brought in were not in her office. The claimant then called Schippers and became upset because someone had removed a duster she had brought in. Instead of talking about why she had not been at work on January 6 and 7, the claimant only talked about the missing duster from her desk and office. After the claimant raised her voice at Schippers about the missing duster and would not stop talking about the missing duster, Schippers hung up on the claimant. The claimant then called Schippers' secretary and asked her who had been in the claimant's office and removed cleaning supplies. Schippers understood the claimant raised her voice at the secretary also.

Since the claimant failed to call to report she was unable to work on January 6 and 7, reported to work late on January 8 and raised her voice at Schippers and her secretary about missing cleaning supplies, Schippers directed the manager to discharge the claimant.

## **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 law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

Since the claimant had only been working an average of 12 hours a week since November and December 2013 and did not receive a warning, the fact she did not report to work on January 6 and 7 does not automatically establish that she committed work-connected misconduct. The fact the claimant considered it a higher priority to take time to get her dog back from the Animal Rescue League than go to work is, however, disturbing. Since the claimant had a vehicle to go to the vet to get paperwork and then get a dog back means she could have gone to work on January 7, but did not. It was the claimant's responsibility, not her daughter's to call the employer on January 6 and 7 to report she was unable to work. On January 8 instead, of focusing on her job, the claimant became upset and raised her voice not only at Schippers but also Schippers' secretary about a missing duster or cleaning supplies she had brought to work. The claimant's actions and attitude on January 7 and 8 amount to an intentional and substantial disregard of the standard of behavior an employee has right to expect from an employee. The claimant committed work-connected misconduct. As of January 12, 2014, the claimant is not qualified to receive benefits.

This matter will be remanded to the Benefits Bureau to determination if and how much the claimant has been overpaid in benefits since January 12, 2014.

## **DECISION:**

The representative's February 11, 2014 determination (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. As of January 12, 2014, the claimant is disqualified from receiving unemployment insurance benefits. 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.

An issue of overpayment of benefits the claimant has received since January 12, 2014, is **Remanded** to the Benefits Bureau to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs