

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

APRIL M HALL
Claimant

APPEAL NO. 12A-UI-10180-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

OC: 07/22/12
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Qwest Corporation filed a timely appeal from a representative's decision dated August 15, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on September 18, 2012. Claimant participated. Participating on behalf of the employer was Mr. John O'Fallon, Hearing Representative, and witness, Mr. Mike Walker, Supervisor, Credit Call Department.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: April Hall was employed by Qwest Corporation from January 22, 2007 until July 27, 2012 when she was discharged for violation of company policy. Ms. Hall was employed as a full-time telephone credit consultant and was paid by the hour. Her immediate supervisor was Mr. Walker.

A decision was made to terminate Ms. Hall based upon incidents that took place on or about July 19, 2012. At that time the claimant was on a final warning for improper call handling and what the company considered to be customer abuse. Ms. Hall had received a final warning from the company on June 15, 2012.

A review of the claimant's calls showed that Ms. Hall had placed a caller on hold for 11 minutes in violation of company policy which requires that calls be promptly handled and that callers are not placed on hold for excessive periods of time. When the matter was reviewed with Ms. Hall, she indicated to her employer, "It's sounds like what I did." A second call reviewed by the employer was considered to be a "ghost call" by the employer as the recorded call had 15 minutes of silence and in the background the claimant is heard inquiring whether another associate was ready to go on break.

Based upon the company's policies which prohibit call avoidance, customer abuse or placing individuals on hold for extended periods, and warnings that had been previously served upon Ms. Hall which included a final warning on June 15, 2012, a decision was made to terminate Ms. Hall as she had no reasonable explanation for the final two incidents although she was given an opportunity to explain the circumstances. The employer reasonably concluded that Ms. Hall had engaged in improper call handling and/or call avoidance in violation of company policy.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In this matter the claimant was discharged after a personal review of two calls showed that Ms. Hall had placed a caller on hold for 11 minutes with no good reason and another call had 15 minutes of silence during a time that the company reasonably expected Ms. Hall to be engaged in receiving and handling calls from company customers. In the background the claimant could be heard speaking to another associate about going on break. Because the claimant had been previously specifically warned for similar conduct and the employer had reasonably concluded that the claimant was engaging in call avoidance and/or customer abuse, a decision was made to terminate Ms. Hall from her employment. Although given the opportunity Ms. Hall had no reasonable explanation for placing a caller on an 11-minute hold time or appearing to engage in a business call with 15 minutes of silence.

For the reasons stated herein the administrative law judge concludes that the employer has sustained its burden of proof in establishing the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated August 15, 2012, reference 01, is reversed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs