

that she may have disconnected some calls because she had just returned from a medical leave of absence after a serious car accident and wasn't being attentive. (23:47-24:17)

During the early afternoon of August 24, 2015, Ms. Maser reported to Sara Werner (immediate supervisor) that she had, again, been experiencing technical issues with her phone off for the past three weeks for which she had already complained to no avail. (16:40-17:13; 26:22-26:30) She was told to flag the calls she had difficulties with, which resulted in her flagging nearly every call. (20:31-21:10) The Employer discovered that between August 24 and 25th, the Claimant had 79 (65%) calls in which it appeared that the Claimant answered the calls on muted status and had manually disconnected the calls. (11:33-11:49; 12:07-12:35; 19:00; 23:25-23:19) The Claimant denied doing this. The Employer played back four of these calls to Ms. Maser (12:05; 19:02-19:10; 21:37-21:47) who, again, explained that she had been having technical issues. The Employer terminated Ms. Maser for intentionally hanging up on customers. (10:18-10:28)

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2013) provides:

Discharge for Misconduct. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665, (Iowa 2000) (quoting *Reigelsberger v. Employment Appeal Board*, 500 N.W.2d 64, 66 (Iowa 1993).

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 substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 NW2d 661 (Iowa 2000).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Claimant's version of events. The Claimant provided credible testimony that she on several occasions had technical difficulty hearing callers respond to her once she presented her opening. Both parties acknowledge that the Claimant did, in fact, report her technical problems to the Employer on different occasions. Although the Employer argues that she was directed on August 24th to alert the Employer if she continued to have problems, the Claimant provided unrefuted testimony that she had 'documented' her troubled calls by flagging as she had been told to do by another superior. Ms. Maser testified that she had already brought her complaints to the Employer, but nothing had been affirmatively done to alleviate her phone problems. It appears that she did everything within reason and within her power to fix what was a difficult to assess and fix problem. Based on this record, we conclude that the Employer failed to satisfy their burden of proving by a preponderance of the evidence that the Claimant's actions were misconduct by its legal definition.

DECISION:

The administrative law judge's decision dated September 28, 2015 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for no disqualifying reason. Accordingly, she is allowed benefits provided she is otherwise eligible.

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