

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN R DEVORE
Claimant

APPEAL NO. 10A-UI-10063-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORTHWEST DIRECT OF IOWA INC
Employer

OC: 06/13/10
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Northwest Direct of Iowa, Inc. (Northwest), filed an appeal from a decision dated July 9, 2010, reference 01. The decision allowed benefits to the claimant, Susan DeVore. After due notice was issued, a hearing was held by telephone conference call on September 1, 2010. The claimant participated on her own behalf. The employer participated by Controller Tanya Rote and Quality Assurance Manager Anna Kloehn.

ISSUE:

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

FINDINGS OF FACT:

Susan DeVore was employed by Northwest from March 13, 2006 until June 14, 2010 as a full-time telemarketer. She received her first warning in December 2008 because of a customer complaint of rudeness. In addition, she had refused to put the customer in touch with a supervisor when asked to do so. Five times in 2009, the supervisor and quality assurance manager met with Ms. DeVore and had her listen to a call she had made in which she sounded "rude." They would discuss with her how she could have handled it better.

On April 20, 2010, she received a written warning for rudeness to a customer and was retrained. On April 23 and 28, 2010, the claimant's calls were monitored and on two more of them she was considered to have sounded rude, and was again retrained. The employer felt there was some improvement and in May 2010, there were no monitored calls that the employer considered to be improper.

On Friday, June 11, 2010, the client, Allstate, received a customer complaint about Ms. DeVore and Northwest was notified immediately via e-mail. Controller Tanya Rote and Quality Assurance Manager Anna Kloehn both listened to the call, which was six minutes long. The customer had said "no" to Ms. DeVore 22 times but the claimant kept talking, sometimes talking over the top of the customer. By state law, client requirement and employer policy, if a customer says "no" twice, the telemarketer is to end the call. Some of the statements made by Ms. DeVore to the customer sounded patronizing, with the implication the customer did not know enough to make a refusal. In addition, she refused to put the customer through to a supervisor when asked to do so.

The review of the call was not completed until after the claimant's shift ended on Friday. Supervisor Samantha Ehrler suspended the claimant the morning of Monday, June 14, 2010, saying it was because of a customer complaint. She was suspended "until further notice." Ms. Ehrler then notified Ms. DeVore by phone that afternoon she was discharged.

Susan DeVore has received unemployment benefits since filing a claim with an effective date of June 13, 2010.

REASONING AND CONCLUSIONS OF LAW:

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 claimant had been advised her job was in jeopardy as a result of her improper conduct on the phones. She was capable of performing her job to the employer's standards, because there were no problems or complaints in May 2010 after she received a written warning and two additional counselings in April 2010. The employer must maintain certain standards of conduct under its own policies, the requirements of the client, and applicable state law. The claimant violated all of these by not ending the June 11, 2010, call when the customer said "no" twice but the claimant kept talking and failing to connect the customer to a supervisor as requested. It could have jeopardized the employer's business relationship with its client or exposed it to legal and financial consequences. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

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.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of July 9, 2010, reference 01, is reversed. Susan DeVore is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw