

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNA NOSBISCH
Claimant

APPEAL NO. 10A-UI-08388-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE CBE GROUP INC
Employer

OC: 05/02/10
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Denna Dail Nosbisch (claimant) appealed an unemployment insurance decision dated June 7, 2010, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from The CBE Group, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 29, 2010. The claimant participated in the hearing. The employer participated through Director Allen Hensley and Mary Phillips, Senior Vice-President of Human Resources. Employer's Exhibits One through Five were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time collector from July 5, 2006 through May 5, 2010. She was discharged after receiving her third written disciplinary warning in the last three months of her employment. Prior to October 8, 2009, the claimant had successfully performed her job duties without receiving any disciplinary warnings, but she received her first verbal warning on that date. In a call on October 8, 2009, the claimant failed to follow policy by not disclosing certain information to the customer and by not verifying the debtor before trying to work out payments. She was coached on November 24, 2009 for being rude to a customer after the customer complained about the claimant's behavior.

The claimant's first written warning was issued on February 5, 2010 and it covered calls between the dates of January 18, 2010 through January 31, 2010. She failed to provide the "mini-Miranda" information on several calls, refused to speak to a spouse in a state where that is permissible, and was rude and argumentative with another customer. The customer was not comfortable setting up a wireless payment over the phone and the claimant told the customer

she would note the customer's refusal to pay. After further attempts by the customer to get the claimant to listen, the claimant hung up on the customer.

The second written warning was issued on March 12, 2010, and the problems were the same as in the previous warning. The claimant refused to provide the "mini-Miranda" and quality assurance disclosure on one call. On another call, she was unprofessional and condescending to the consumer and again said she would note the customer's refusal to take care of it even though the customer did not refuse. The consumer in an additional call thought the claimant's tone was aggressive and when the consumer told the claimant not to use that tone, the claimant responded by stating, "Ma'am, don't tell me how to talk." There were several other issues with her failure to work on the accounts to the fullest; she failed to suggest resources and/or to provide guidance in resolving the issues. This warning advised the claimant she was to remain professional and respectful on each and every call and further violations would result in her termination.

The final written warning was issued on May 5, 2010, based on a compliance monitor completed on May 4, 2010 based on the claimant's calls from May 3, 2010. The claimant was repeatedly rude, condescending, and unprofessional to the consumers with whom she spoke. She was also argumentative, talked over the consumer, and hung up on several consumers before the call was completed. The employer documented the claimant's inappropriate conduct on seven separate calls; and since she had been previously warned, she was discharged at that time.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 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 claimant was discharged for poor work performance. When an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. Kelly v. Iowa Department of Job Service, 386 N.W.2d 552 (Iowa App. 1986). The claimant had the ability to perform her job satisfactorily, as can be seen by the lack of disciplinary warnings for the first three years.

The claimant contends she did nothing wrong and believes she was discharged because a co-employee was "out to get her." However, the employer presented a preponderance of evidence to demonstrate the claimant was repeatedly inappropriate with customers even after being warned. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated June 7, 2010, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw