

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

---

**JENNIFER M OPPERMAN**  
Claimant

**CBE COMPANIES INC**  
Employer

**APPEAL 15A-UI-12931-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/25/15  
Claimant: Respondent (1)**

---

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the November 16, 2015, (reference 01) unemployment insurance decision that allowed benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on December 10, 2015. The claimant participated personally. The employer participated through Amanda Hilmer, Senior Operations Manager. Dustin Rogers and Mary Phillips also attended with the employer. Employer Exhibit One was admitted into evidence. The administrative law judge took official notice of the administrative record, including fact-finding documents.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a collector and was separated from employment on October 16, 2015, when she was discharged (Employer Exhibit One).

The claimant provided inbound and outbound customer service for the employer's client, Verizon. The claimant would on average complete between 70 to 100 calls in a shift, and was routinely audited through a quality control team. In addition, from time to time, the employer would receive feedback through the employer's client directly, if a customer complained about a call. Prior to separation, the claimant had no disciplinary history, but had received three "training" calls following audited calls and customer complaints regarding her tone of voice, and being short with customers. The final incident occurred when the claimant self-reported a call between herself and a customer, that had not gone well. During the call, which the employer

pulled and listened to after the claimant reported, she was observed telling the customer that she (the customer) was being rude and could talk to a supervisor, followed by "I don't give a damn." In light of no progressive discipline, the employer determined the call to be egregious enough to warrant immediate discharge.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1200.00, since filing a claim with an effective date of November 16, 2015, through the week ending December 5, 2015. The administrative record also establishes that the employer did participate in the fact-finding interview on November 13, 2015.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation.

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 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a). Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. Arndt v. City of

*LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds that based on the employer's policies, the employer had business reasons for discharging the claimant.

In this case, the claimant self-reported a poorly handled call in which she called the customer "rude" and said the word "damn." The administrative law judge does not condone the claimant's choice of words during the call, but it cannot be ignored that the claimant handled 70 to 100 calls each day, and had never received prior disciplinary action for her call handling. The claimant had received only training following reviewed calls. Therefore, based on the evidence presented, the administrative law judge concludes the conduct for which the claimant was discharged for was an isolated instance of poor judgment. Inasmuch as the employer had not previously warned the claimant about the issue leading to the separation, it has not met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Training or general notice to staff about a policy is not considered a disciplinary warning. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case.

Because the claimant is eligible for benefits, she has not been overpaid benefits. As a result, the issues of recovery of any overpayment and possible relief from charges are moot.

**DECISION:**

The November 16, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The claimant has not been overpaid benefits, and the employer is not relieved of charges associated with the claim.

---

Jennifer L. Coe  
Administrative Law Judge

---

Decision Dated and Mailed

jlc/css