

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURA A VIRCKS
Claimant

APPEAL NO. 12A-UI-14450-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THOMAS L CARDELLA & ASSOCIATES INC
Employer

**OC: 11/04/12
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated November 29, 2012, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on January 10, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Barbara Toney participated in the hearing on behalf of the employer with a witness, John Jakubic. Exhibits One through Three were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a customer service agent from September 24, 2010, to November 7, 2012. She was informed and understood that under the employer's work rules, agents were prohibited from disconnecting a customer prematurely. She had been warned about not responding sufficiently to a customer's rejecting to buy a product. On November 6, 2012, the claimant was warned about disconnecting a customer prematurely. The claimant did not do this deliberately to avoid talking to the customer.

On November 7, 2012, the claimant had a customer who had declined to buy a product. The claimant responded to overcome the customer's decision not to buy a product, but the customer confirmed they were not interested. The claimant properly thanked the customer for their time, provided the company's phone number and website information for questions, and then paused a minute to see if the customer had anything further to say. Just as the claimant was disconnecting the call so she could take her next call, the customer starting saying something, but it was too late to stop the call from disconnecting and the claimant had no way to call the customer back. The claimant did not deliberately disconnect the call to avoid serving the customer and answering a question.

When the call was monitored, the employer believed the claimant had deliberately hung up on the customer and discharged her.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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, 11 (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. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony that she did not deliberately hang up on customers. While the employer may have been justified in discharging the claimant, willful and substantial misconduct as defined by the unemployment insurance law has not been established.

DECISION:

The unemployment insurance decision dated November 29, 2012, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/tll