

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE**

68-0157 (7-97) – 3091078 - EI

**JEFFREY L SEARCY
2000 E 29TH ST
DES MOINES IA 50317**

**QWEST CORPORATION
C/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000**

**MARK ROCHA
CWA LOCAL 7102
3612 SW 9TH ST
DES MOINES IA 50315**

**Appeal Number: 04A-UI-01643-CT
OC: 01/04/04 R: 02
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Qwest Corporation filed an appeal from a representative's decision dated February 10, 2004, reference 01, which held that no disqualification would be imposed regarding Jeffrey Searcy's separation from employment. After due notice was issued, a hearing was held by telephone on March 8, 2004. The hearing was recessed and reconvened on March 10, 2004. Mr. Searcy participated personally and was represented by Mark Rocha of CWA Local 7102. The employer participated by Mark Berumen, Investigator, and Steve Annin, Supervisor of Network Operations. The employer was represented by Sandy Fitch of Employers Unity. Exhibits One through Seven were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Searcy was employed by Qwest Corporation from January 25, 1999 until January 14, 2004. He was employed full time as a screening consultant. He was discharged after a coworker complained about his conduct towards her.

On December 17, 2003, Steve Annin received a complaint from a female employee alleging inappropriate conduct on Mr. Searcy's part. She indicated that he had approached her desk and read a fortune from a cookie to her. The fortune read something to the effect "you will soon be next to something big." She alleged that he then pushed his belly and crotch area against her and she tried to push him away. She further indicated that he continued pressing against her while commenting that it was "getting closer and getting bigger." She told him to stop it and to "go away, pig." She stated that Mr. Searcy then said that it was getting smaller and returned to his work station. No other employees witnessed the incident but another employee did hear the alleged victim say "go away, pig." When she made the complaint on December 16, the alleged victim also indicated that Mr. Searcy was always touching her and sniffing her. She indicated that he made her feel uncomfortable on a daily basis.

Mr. Searcy was suspended on December 17 and notified of his discharge on January 14. In making the decision to discharge, the employer considered the fact that Mr. Searcy had been counseled in July of 2003 for making inappropriate comments in the workplace. On that occasion, a third party was offended by a conversation Mr. Searcy was having with another individual about the types of underwear various people wore.

Mr. Searcy has received a total of \$3,312.00 in job insurance benefits since filing his claim effective January 4, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Searcy was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Searcy was discharged for inappropriate conduct in the workplace. The employer's evidence in this matter consists exclusively of hearsay testimony. However, the administrative law judge found it more persuasive than Mr. Searcy's sworn testimony. Prior to the complaint of December 16, he had a good working relationship with the complainant. There was seemingly no reason for her to fabricate the incident she relayed to the employer. Mr. Searcy's contention that her complaint was in retaliation for the incident in July of 2003 lacks merit. There would seemingly be no reason for her to retaliate since the incident involved a counseling for Mr. Searcy, not for her or anyone he considered to be a close ally of hers. If Mr. Searcy and the alleged victim were just joking around as usual on December 16, there would be no reason for her to complain about him or to manufacture an untrue version of what happened.

For the reasons stated herein, the administrative law judge concludes that the complaint filed against Mr. Searcy on December 17 was a true and accurate report of what occurred on December 16. Mr. Searcy knew or should have known that rubbing his body, especially his crotch area, against a female coworker was inappropriate. He continued in this behavior in

spite of her efforts to make him stop. His conduct had the potential of subjecting the employer to legal claims of sexual harassment. For the reasons stated herein, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

Mr. Searcy has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code Section 96.3(7).

DECISION:

The representative's decision dated February 10, 2004, reference 01, is hereby reversed. Mr. Searcy was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Searcy has been overpaid \$3,312.00 in job insurance benefits.

cfc/b