

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

NANETTE L PAUL
800 GOLDSMITH APT 2
STRATFORD IA 50249

COMMUNICATIONS DATA SERVICE INC
ATTN HUMAN RESOURCES
PO BOX 671
DES MOINES IA 50303

Appeal Number: 05A-UI-01246-AT
OC: 01-02-05 R: 02
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Nanette L. Paul filed a timely appeal from an unemployment insurance decision dated January 25, 2005, reference 01, which disqualified her for benefits. After due notice was issued, a telephone hearing was held February 23, 2005 with Ms. Paul participating. Human Resources Manager Jill Rasmussen and Production Manager Linda Hoffman participated for the employer, Communications Data Service, Inc. Employer Exhibit 1 was admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Nanette L. Paul was employed by Communications Data Service, Inc. from October 9, 1987 until she was discharged December 30, 2004. She last worked as a resolution clerk. On December 17, 2004, Ms. Paul was unable to balance a client's account. Proper procedure called for her to notify a member of management to seek assistance. Ms. Paul did not do so. Instead, she included a \$101.32 variance in the client's variance. This would have resulted in a lower deposit of funds for the client. Although Ms. Paul did not notify anyone, other employees found and corrected the error before the deposit left the employer's premises on December 19, 2004. Ms. Paul was suspended on December 20, 2004 after an investigation in which she offered no explanation for failing to notify a manager of the discrepancy. She was on vacation from December 22 through December 29, 2004 and was discharged upon her return on December 30.

Ms. Paul had received a warning characterized as a final warning for similar actions on September 10, 2002.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct in connection with her employment. It does.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

In testimony the claimant acknowledged that she had not attempted to see if a member of management was available to assist her on December 17, 2004. Other testimony establishes that Ms. Paul knew the appropriate procedure and had received a final warning for a similar incident in the past. While the error was found before the deposit left the employer's premises, it was found in spite of Ms. Paul's actions, not because of them. Benefits are withheld because the claimant failed to follow established policy.

DECISION:

The unemployment insurance decision dated January 25, 2005, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

tjc/kjf