

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JO LYNNE S LONG**

Claimant

**APPEAL NO. 11A-UI-13061-A**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PER MAR SECURITY & RESEARCH CORP**

Employer

**OC: 08/21/11**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Jo Lynne S. Long filed a timely appeal from an unemployment insurance decision dated September 23, 2011, reference 01, that disqualified her for benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, on November 2, 2011, with Ms. Long participating. Exhibit A was admitted into evidence on her behalf. General Manager Michael Emerson participated for the employer, Per Mar Security & Research Corporation. Employer Exhibits 1 through 3 were admitted into evidence.

**ISSUE:**

Was the claimant discharged for misconduct in connection with the employment?

**FINDINGS OF FACT:**

Jo Lynne S. Long was employed by Per Mar Security and Research Corporation from November or December 2008 until she was discharged August 25, 2011. She last worked as a service dispatcher.

The final incident leading to the discharge was Ms. Long's failure to schedule a service technician for a customer where the requested service date was August 19, 2011. The sales representative had e-mailed the request to Ms. Long on August 11, 2011. She overlooked or did not see the e-mail.

Ms. Long had received two prior warnings in April 2011. One warning was for allegedly failing to call service customers after the fact to follow up after their service. Ms. Long had placed the calls. She offered to provide her call log to General Manager Michael Emerson. Mr. Emerson chose not to look at the log. The first warning was for failing to include parts on two service tickets. No parts had been used on one of the service calls, a repair of a camera owned by the customer. In the second instance, a preliminary service ticket was completed and sent to the customer before the service technician had reported all of the work and parts used on the call. The preliminary service ticket had been prepared at the instruction of an individual from corporate headquarters.

Ms. Long had received favorable evaluations from her previous supervisor. Mr. Emerson became her supervisor in early 2011.

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

The question is whether the evidence in this record establishes that the claimant was discharged for misconduct in connection with the employment. It does not.

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.

The employer has the burden of proof. See Iowa Code section 96.6-2. Misconduct is most often found in deliberate actions contrary to the employer's interest, but it also may be found in repeated acts of carelessness or negligence. The evidence establishes the possibility of a final act of carelessness. The claimant testified that she had not seen the August 11 e-mail from the sales representative. It is not necessary for the administrative law judge to determine whether the e-mail was delivered to Ms. Long or whether she overlooked it, because the evidence does not establish willful or careless behavior in the incidents leading to the prior warnings. The claimant testified without contradiction as to the circumstances surrounding the service tickets that did not include all of the applicable parts. The employer has not established that Ms. Long failed to return calls to service customers, only that Mr. Emerson did not hear her do so. Based upon the evidence in this record, no disqualification may be imposed.

**DECISION:**

The unemployment insurance decision dated September 23, 2011, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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