

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**REBECCA D MC GREW**  
Claimant

**APPEAL NO: 13A-UI-08225-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THOMAS L CARDELLA & ASSOCIATES INC**  
Employer

**OC: 06/16/13  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's July 1, 2013 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Robin Moore represented the employer. Dylan Hutton, the director of operations, testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in February 2013. The claimant worked as a full-time customer care agent or inbound agent for a bank. When the claimant started this employment, she received a copy of the employer's code of conduct and signed a form indicating she had read and understood this policy. The employer's code of conduct informs employees that if they use profanity on an open line or near an open line, they will be discharged.

Prior to June 7, the claimant's job was not in jeopardy and she was one of the employer's' top sales people. On June 7, after the claimant completed a sale and transferred the customer to the bank, she forgot to mute her phone. Several seconds after the customer had been transferred; the claimant talked to herself and said, "It is so cold in here. What the hell. It is f\_\_\_\_ cold." Since the claimant had not muted her phone, her comments were recorded.

The employer verifies sales and a verification department employee heard the comments and alerted Hutton about the claimant's comments. When Hutton talked to the claimant, she acknowledged that she had forgotten to mute her phone. In accordance with the code of conduct policy, the employer discharged the claimant on June 7, 2013.

## REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

Based on the employer's code of conduct policy, the employer established justifiable business reasons for discharging the claimant. The evidence does not establish that the claimant intentionally disregarded the employer's interests. Instead, she was negligent and forgot to mute her phone after she transferred a customer. The claimant's negligence on June 7 does not rise to the level of work-connected misconduct. As of June 16, 2013, the claimant is qualified to receive benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

**DECISION:**

The representative's July 1, 2013 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of June 16, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css