

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

RITA K PALOMO  
3049 CRYSTAL SPRINGS #1222  
BEDFORD TX 76021

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

Appeal Number: 04A-UI-08589-HT  
OC: 07/11/04 R: 02  
Claimant: Respondent (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer, Qwest, filed an appeal from a decision dated August 4, 2004, reference 01. The decision allowed benefits to the claimant, Rita Palomo. After due notice was issued, a hearing was held by telephone conference call on August 31, 2004. The claimant participated on her own behalf. The employer participated by Lead EEO Representative Carol Mullins and Manager Shirley Wicker and was represented by Employers Unity in the person of Rachel Thompson.

#### 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: Rita Palomo was employed by Qwest from July 14, 2003 until July 14, 2004. She was a full-time supervisor.

In June 2004, Jackie Hamill complained to her manager about Ms. Palomo's conduct at a gathering in March 2004, at a local bar. She indicated the claimant had said and done inappropriate things. The matter was investigated and allegations were made that Ms. Palomo had removed her bra in the bar, inappropriately touched other people, and talked of inappropriate subjects. There were further allegations that she had used inappropriate language in the Qwest hospitality suite at a professional function in another town.

The claimant was interviewed along with other employees and denied all but two of the incidents at the bar in March, but her version of those events differed from that of other witnesses. She denied any inappropriate conduct at the professional function.

EEO Representative Carol Mullins, who investigated the complaint, referred the matter to Manager Shirley Wicker with the recommendation for discharge as the claimant was a supervisor and should be held to a higher standard of conduct. Qwest sexual harassment policy does include conduct at any "function," even those not organized or sponsored by the employer, as in the case of the gathering at the bar. Ms. Palomo was discharged by Ms. Wicker on July 14, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is 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.

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).

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). In the present case, Qwest did not provide any first-hand, eyewitness testimony about any of the incidents of inappropriate conduct of which the claimant was accused. Ms. Palomo's testimony about the general nature of the gathering in the bar did not support the employer's contention that anyone present found any conduct inappropriate at the time, or that she was asked to stop or any disapproval was expressed. It appeared to be a gathering where risqué conduct and conversation was the norm among all the participants. In this context, the claimant's conduct does not rise to the level of substantial, job-related misconduct and disqualification may not be imposed.

#### DECISION:

The representative's decision of August 4, 2004, reference 01, is affirmed. Rita Palomo is qualified for benefits provided she is otherwise eligible.

bgh/kjf