

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHELSEA M THORNE
Claimant

APPEAL NO. 12A-UI-04897-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES INC
Employer

OC: 03/18/12
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

APAC Customer Services, Inc. filed a timely appeal from a representative's decision dated April 16, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on May 22, 2012. Although duly notified, the claimant did not respond to the notice of hearing and did not participate. The employer participated by Ms. Turkessa Newsome, Human Resource Generalist.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Chelsea Thorne was employed by APAC Customer Services, Inc. from January 30, 2002 until March 16, 2012 when she was discharged from employment. Ms. Thorne held the position of full-time customer service representative and was paid by the hour. Claimant's immediate supervisor was Laura Bail-Triad.

Ms. Thorne was discharged following an incident that took place on March 14, 2012. On that date the claimant got into a verbal altercation with another employee and directed violent, inappropriate language at the other employee. The claimant's statements were overheard by other workers and the team leader and potentially could be overheard by clients jeopardizing the employer's contract with those clients.

Because the claimant had violated a known company policy which prohibited the use of inappropriate language, Ms. Thorne was discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. 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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In this matter the evidence establishes the claimant was discharged for violating a known and reasonable company policy which prohibited the use of profanity or inappropriate language in the work place. The evidence establishes that Ms. Thorne was aware of the policy and was aware that she was subject to discharge under the company's zero tolerance policy for the use of profanity or inappropriate language.

The claimant was discharged after she engaged in inappropriate conduct by directing violent, inappropriate language at another employee during a verbal confrontation on the floor of APAC Customer Services, Inc. Claimant's inappropriate statements were overheard by other employees as well as her team leader. Claimant's conduct jeopardized the contract between

the employer and their clients. There being no evidence to the contrary, the administrative law judge concludes that the employer has sustained its burden of proof in establishing disqualifying job misconduct. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated April 16, 2012, reference 01, is reversed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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