

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL CARRIZALES
Claimant

APPEAL NO. 08A-UI-03513-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

**OC: 03/09/08 R: 01
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated March 31, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 23, 2008. The claimant participated. The employer participated by Steve Zaks, Hearing Representative, and witnesses, Gregory Duncan and James Macke. Employer's Exhibits One through Fifteen were received into evidence. Claimant's Exhibit A was received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with his work and whether the claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from September 23, 2002 until March 6, 2008 when he was discharged from employment. Mr. Carrizales held the position of full-time sales manager at the employer's Sioux City, Iowa facility. The claimant was paid by salary. His immediate supervisor was Gregory Duncan, Team Leader.

Mr. Carrizales was discharged from his employment based upon repetitive complaints from team members under his supervision regarding the manner in which he performed his supervisory duties. Mr. Carrizales was aware through the company's code of conduct as well as a prior warning that had been issued to him in May 2007 that the employer expected the claimant to refrain from making derogatory or disparaging comments against management, individuals under his supervision or other employees. The claimant was advised to treat employees and management with respect and dignity and to avoid being disrespectful, belittling or condescending. The claimant was also informed of the employer's expectation that he would be available to assist team members and to avoid displaying what might be considered to be an arrogant demeanor. In an effort to emphasize the necessity for compliance, Mr. Carrizales was

sent home for one afternoon to prepare a plan to address his unacceptable behavior in the work place and was advised that failure to follow company expectations would result in increasing discipline up to and including termination (See Exhibit 14). Mr. Carrizales prepared a corrective plan and submitted it to management.

In the months that followed the employer received complaints from time to time from employees regarding Mr. Carrizales' demeanor and conduct as a training manager. The claimant, in turn, brought to the attention of management one or more individuals who the claimant considered to be disruptive and spreading disparaging comments. Qwest Corporation followed up with the claimant's complaints removing one individual from Mr. Carrizales' supervision.

In an effort to assess the effectiveness of management personnel, the company utilizes a "skip level meeting" with employees under an individual's supervision without the management person themselves being present. As the result of a skip level meeting conducted on October 22, 2007 the employer concluded that numerous areas of previous concern and warning had not been resolved and were continuing. Team members complained that Mr. Carrizales was not available to offer assistance, that the claimant spoke to team members in a condescending and threatening manner and that Mr. Carrizales continued to treat employees in a disrespectful manner. As a majority of the approximate 15 team members who were interviewed had indicated conduct that had violated the previous warning that had been issued to Mr. Carrizales, a decision was made to terminate the claimant from employment.

It is the claimant's position that the nature of his work caused him to be in effect unpopular with employees at times and to cause some employees to be resentful or to attempt to retaliate against him. It is the claimant's further position that a previous employee under his supervision had repeatedly made inappropriate statements about the claimant and the claimant believes that this person had, in effect, tainted the view of other individuals in the claimant's training class. It is the claimant's belief that he performed his job in an exceptional manner and that his discharge from employment was unjustified.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the employer has sustained its burden of proof in establishing that the claimant's discharge took place under disqualifying conditions. It has. The evidence in the record establishes that although Mr. Carrizales had many excellent management skills, longstanding complaints about the claimant's demeanor and the manner that he treated individuals in management or under his supervision had resulted in dissatisfaction and repeated complaints. In an effort to re-dress the issues and to retain Mr. Carrizales as an employee in May 2007 the employer specifically counseled the claimant with respect to complaints about arrogance, demeaning comments, failure to be available to assist employees and other similar conduct that was unbeneficial to the company and demoralizing to employees who worked with Mr. Carrizales. The claimant was warned at that time that continued behavior of that nature would result in increasing disciplinary action including termination. The claimant was required to prepare a plan to change his behavior and the claimant did so.

In spite of attempts to change the claimant's demeanor in interacting with employees, complaints continued. On February 22, 2008, the company held a "skip level meeting" with individuals under Mr. Carrizales' supervision and based upon feedback from a majority of individuals under the claimant's supervision, the employer reasonably concluded that Mr. Carrizales continued to engage in demeaning conduct towards employees, belittling statements and continued to fail to be available to assist employees when needed. Because

the complaints were of the same nature that the company had previously received and the claimant had been counseled about, a decision was made to terminate Mr. Carrizales from his employment for these reasons.

Although the administrative law judge is cognizant that the claimant's position may at times have caused some employees to be somewhat resentful and to verbalize dissatisfactions, the administrative law judge nevertheless concludes that the employer has by a preponderance of the evidence clearly established that the claimant's conduct showed a disregard for the employer's interests and reasonable standards of behavior that they had a right to expect of their employees under the provisions of the Iowa Employment Security Act. Mr. Carrizales was aware of the areas of employer dissatisfaction that he was required to correct. The claimant had the ability to do but did not. His conduct and interaction with other employees continued to be disruptive and demeaning resulting in his termination from employment.

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.

For the reasons stated herein, the administrative law judge concludes that the claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. The claimant is overpaid benefits in the amount of \$2,160.00.

DECISION:

The representative's decision dated March 31, 2008, reference 01, is hereby reversed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in or been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided that he is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,160.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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