

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRSITEL U HAAS-BAUMGARTNER
Claimant

APPEAL NO: 13A-UI-13438-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CBE COMPANIES INC
Employer

**OC: 11/10/13
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 2, 2013 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing with her representative, Hattie Holmes. Jon Primus, the director of operations, Mary Phillips, Cody Engel and Shelton Rowe appeared on the employer's behalf. During the hearing, Employer Exhibits One through Seven were offered and admitted as evidence. 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 October 2004. She worked as a full-time collector. The employer's policy informs employees they will be discharged if they receive three written warnings within six months. The claimant knew about and understood this policy.

On June 4, 2013, the claimant received a verbal coaching for the way she talked to a consumer while trying to collect a debt. (Employer Exhibit Seven.) On July 16, 2013, the claimant received a written warning for bringing personal situations and experiences into her phone calls with consumers that resulted in the call lasting more than ten minutes. The warning informed the claimant that calls over ten minutes would be monitored to make sure she stopped talking about her personal experiences with consumers. (Employer Exhibit Three.)

On August 8, the claimant received a second written warning for having two calls over ten minutes long when she talked about personal situations with consumers. The employer again told the claimant to stop talking about personal situations with consumers. (Employer Exhibit Two.)

Shortly after she received the August 8 written warning, the claimant attended a meeting where the employer told employees that the length of a call did not make a difference. Recent studies had shown that longer calls had better results in collecting money from consumers. The claimant agreed with the recent study. Even after a consumer indicated they would pay a bill, the claimant tried to build rapport with the consumer so they would not cancel the payment after the call ended.

The claimant had 300 to 700 calls a day. She usually met her monthly collection goals. The employer's quality assurance team monitored a call the claimant made on October 24 and one made on November 4. In addition to other issues, the claimant again talked about personal situations and experiences with these consumers that resulted in these calls being over ten minutes. The employer gave the claimant a written warning on November 11 for the calls that the quality assurance department had listened to. (Employer Exhibit One.)

On November 11, the employer discharged the claimant for receiving three written warnings within six months for the same problem.

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).

The employer established justifiable business reasons for discharging the claimant. In accordance with the employer's policy, the employer was justified in discharging the claimant after she received her third written warning within five months. Even though the claimant continued to talk about personal experience and situations with consumers, she usually met her monthly collection goals. The claimant believed she was building rapport with the consumer so they would pay a bill and not cancel it after the phone call ended. Even though the employer did not encourage calls of more than ten minutes, the evidence does not establish that the claimant consistently had phone calls of over ten minutes. She had some occasional calls over ten minutes that occurred when she talked about personal situations and experiences. The fact that

she had six documented calls between June and November 11 that were more than ten minutes long where she talked about personal situations and experiences does not establish work-connected misconduct. Since the claimant was trying to build rapport with a consumer and usually met her monthly collection goals, the claimant did not intentionally or substantially disregard the employer's interests. The facts do not establish that the claimant committed work-connected misconduct. As of November 10, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's December 2, 2013 determination (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of November 10, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs