

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLY J IRLMEIER
Claimant

APPEAL NO. 09A-UI-11086-H

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEARS ROEBUCK & CO
Employer

**Original Claim: 06/21/09
Claimant: Respondent (1)**

Section 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The employer, Sears Roebuck and Company (Sears), filed an appeal from a decision dated July 23, 2009, reference 01. The decision allowed benefits to the claimant, Kelly Irlmeier. After due notice was issued, a hearing was held in Des Moines, Iowa, on September 14, 2009. The claimant participated on her own behalf and with Sharon Wright and Julie Fatino. The employer participated by Team Manager Will Hartke and Sales and Service Manager Lori Kramer and was represented by Human Resources Manager Bridgett Clark.

ISSUE:

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

FINDINGS OF FACT:

Kelly Irlmeier was employed by Sears from September 21, 1992 until June 25, 2009 as a full-time national customer relations specialist. On June 24, 2008, she received a final written warning for disconnecting a customer before the incoming call had been concluded. The warning notified her further disciplinary action, up to and including discharge, would occur if there were any other incidents within the next year.

On June 2, 2009, Team Manager Will Hartke was reviewing "captured" calls from May 27, 2009. The report identified three calls being disconnected within a two-second period on Ms. Irlmeier's line. He did not question her about this until June 7, 2009, at which time she was asked about the incident and produced a statement. The claimant maintained faulty technology with the phone system was responsible. The phone system, along with poorly trained third-party contractors, had created many disconnects resulting from faulty technology and transferred calls that had been accidentally dropped.

Mr. Hartke took Ms. Irlmeier's statement to Sales and Service Manager Lori Kramer on June 7, 2009, and she recommended he contact the human resources representative, which he did. The manager and the representative conferred over several days and the decision was made to discharge on June 15, 2009, but the claimant was not notified of the termination until June 25,

2009, because Ms. Kramer, Ms. Clark, and Ms. Irlmeier were not all in the center at the same time until that date.

Many of the personnel in the call center had complained about the problems with the third-party contractors not being trained properly and technical problems with the phone system itself. Mr. Hartke was notified frequently of these problems by e-mail until, in October 2008, he requested the e-mails be stopped and he would be looking into the problem. The problems did not stop but, because of management's request, the complaints did. Some of the center personnel contacted the technical team directly to see if anything could be done, but the problems persisted.

The prior manager of the call center had not issued any disciplinary action for disconnected calls during his tenure because he maintained it was not possible to determine what caused the calls to be disconnected.

REASONING AND CONCLUSIONS OF LAW:

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 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, the employer presented no evidence, not even the "captured calls" report, that the claimant deliberately disconnected three phone calls in two seconds on May 27, 2009. The employer

was aware of the problems with the phone system and the poorly trained third-party contactors, but nothing was done to remedy the problem.

The claimant presented sufficient testimony from other witnesses regarding the problems with the phone system and the lack of a solution by the employer. The employer did not present sufficient evidence and testimony to show by a preponderance of the evidence Ms. Irlmeier willfully and deliberately disconnected the three calls on the date in question. The administrative law judge finds the employer had not met its burden of proof and disqualification may not be imposed.

DECISION:

The representative's decision of July 23, 2009, reference 01, is affirmed. Kelly Irlmeier is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw