

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARAH J BOETTGER
Claimant

APPEAL NO. 09A-UI-07638-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

**Original Claim: 04/05/09
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Qwest Corporation filed an appeal from a representative's decision dated May 13, 2009, reference 02, which held that no disqualification would be imposed regarding Sarah Boettger's separation from employment. After due notice was issued, a hearing was held by telephone on June 11 and October 15, 2009. Ms. Boettger participated personally and Exhibits A through J were admitted on her behalf. The employer participated by Sandra Thibodeau, Center Site Director, and was represented by Larry Lampel of Barnett Associates. Exhibits One through Four were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Boettger was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Boettger was employed by Qwest from February 18, 2008 until April 15, 2009. She worked full-time as a center sales and service associate. She was discharged based on allegations that she violated the employer's policies. Sales associates are monitored at least eight times each month. Of those eight, four are unannounced monitorings by quality assurance personnel.

On or about March 19, 2009, the employer received a report concerning DIRECTV orders placed by Ms. Boettger during the period from July of 2008 until January 1, 2009. Of the 148 sales reported, 111 had canceled for unknown reasons. Of the 148, 19 indicated that DIRECTV services had not been ordered. The report caused the employer to conduct an investigation, which did not conclude until approximately April 9. During the investigation, the employer was only able to make contact with one of the 19 customers who said services had not been ordered. The customer was contacted on April 9 and indicated she had only called Qwest to find out if a number was a long distance number and had declined DIRECTV. Ms. Boettger's notes from the call indicate that the customer's initial inquiry concerned the long distance call. She indicated that she then went through the process of trying to sell the customer other products. She indicated that it was difficult to communicate with the customer because she was using TTY services due to being hearing impaired.

As a result of the conversation with the customer who denied ordering DIRECTV, the employer concluded that Ms. Boettger was in violation of the warning of dismissal issued in September of 2008. Therefore, she was discharged on April 15, 2009.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Boettger was discharged based on an allegation that she engaged in unethical sales practices by placing orders for customers without their authorization. The employer's evidence consists of the report that in 19 of 148 orders placed, the customers indicated that services had not been ordered. The evidence also consists of the April 9 statement from a customer that services were not ordered.

With the exception of the customer the employer was able to speak to on April 9, the dates on which Ms. Boettger placed the remaining 18 orders are unknown. The report covered the period from July of 2008 through January 1, 2009. Therefore, it is impossible to determine whether they were placed before or after Ms. Boettger was warned on September 19. The customer the employer spoke to on April 9 communicated with Ms. Boettger using the TTY system. The conversation was, in essence, through a translator. It is impossible to determine if something was lost in translation. There was no recording of the conversation that would allow the administrative law judge to make an independent determination as to whether the customer declined DIRECTV or ordered it.

The employer's evidence in this matter is not sufficient to establish to a certainty that Ms. Boettger falsified orders. The fact that customers reported that services had not been ordered is not sufficient to establish misconduct. In this case, a paper report, without more, is not a sufficient basis on which to conclude that misconduct has been established. Inasmuch as the employer had the burden of proof, any doubt will be resolved in Ms. Boettger's favor. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated May 13, 2009, reference 02, is hereby affirmed. Ms. Boettger was discharged by Qwest, but disqualifying misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw