

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

ANDREA M BOURN  
337 – 8<sup>TH</sup> ST  
SILVIS IL 61282-2118

APAC CUSTOMER SERVICES OF IOWA  
C/O TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-04390-DWT  
OC: 03/26/06 R: 04  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

APAC Customer Services of Iowa LLC (employer) appealed a representative's April 13, 2006 decision (reference 01) that concluded Andrea M. Bourn (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 9, 2006. The claimant responded to the hearing notice and provided a phone number in which to contact her for the hearing. The claimant was not available for the hearing. The claimant did not contact the Appeals Section again on May 9. Emily Dipple, the team leader, and Turkessa Hill appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

#### ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

#### FINDINGS OF FACT:

The claimant started working for the employer on November 29, 2004. The claimant worked as a part-time telephone sales representative. The employer policy informs employees they can be immediately discharged if they enter a fraudulent sale.

An outside company randomly monitors calls as part of the employer's quality assurance program. The outside company discovered the claimant entered a sale when the telephone recording revealed the customer told the claimant two times she did not want the product the claimant tried selling the customer. The claimant failed to notify the employer that she had made a mistake by entering a sale when a customer declined the product.

The employer had recently doubled the claimant's sales goal objective. An employee has the ability to correct a transaction when it has been incorrectly recorded as a sale. The employer discharged the claimant on March 23, 2006 for recording a transaction as a sale when the customer declined the product more than once.

The claimant established a claim for unemployment insurance benefits during the week of March 26, 2006. The claimant filed claims for the weeks ending April 1 through May 6, 2006. The claimant received \$850.00 in benefits for these weeks.

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence indicates the claimant entered a transaction as a sale even though the customer clearly did not want the product the claimant attempted to sell her. Without any testimony from the claimant, a preponderance of the evidence indicates the claimant intentionally and substantially disregarded the employer's interests. The employer discharged the claimant for work-connected misconduct. As of March 26, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for

the weeks ending April 1 through May 6, 2006. The claimant has been overpaid \$850.00 in benefits she received for these weeks.

DECISION:

The representative's April 13, 2006 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of March 26, 2006. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending April 1 through May 6, 2006. The claimant has been overpaid and must repay a total of \$850.00 in benefits she received for these weeks.

dlw/pjs