

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMBER M FEAGINS**  
Claimant

**APPEAL NO. 13A-UI-07025-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CDS GLOBAL INC**  
Employer

**OC: 05/19/13**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated June 4, 2013, reference 01, which denied unemployment insurance benefits finding that the claimant was discharged from work under disqualifying conditions. After due notice was provided, a telephone hearing was held on July 16, 2013. Claimant participated. The employer participated by Ms. Jill Rasmussen, Work Flow Manager and Ms. Angie Nash, Customer Service Representative Manager.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct in connection with her work.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Amber Feagins was employed by DCS Global, Inc. from February 7, 2011 until May 20, 2013 when she was discharged from employment. Ms. Feagins was employed as a full-time customer service representative at the employer's telephone sales center and was paid by the hour. Her immediate supervisor was Jane Culmer.

Ms. Feagins was discharged on May 20, 2013 when the employer concluded that she had violated the company's adjustment policy by adjusting an account on company computers and placing an order for a subscription to a family handyman magazine to her personal address using a fictitious name. The claimant also adjusted the account to issue her back issues of the magazine. Company policy prohibits employees from transactions for themselves, friends or family members and are prohibited from making adjustments or placing any orders for the above-stated individuals or themselves. Employees are aware of the transaction policy and are aware that violation of the policy can result in a discharge from employment on the first occurrence.

On May 20, 2013, the customer service manager noticed the claimant's home address on a transaction. The company investigated and determined that the claimant had used her sign-up

information to make the adjustment, identifying the claimant as the person who had accessed the account and adjusted it without authorization. Employees are aware that they must receive the specific permission of their supervisors or managers to make any transaction adjustments on their own accounts, the accounts of friends or family members. It is the employer's practice not to authorize such transactions but to have them performed by other employees.

When questioned about the matter, Ms. Feagins stated that she was "practicing" on the new account to make herself familiar with it in case she was assigned to it in the future. The employer did not find the claimant's explanation to be credible and Ms. Feagins was discharged from employment.

It is the claimant's position that she was practicing and inadvertently had the magazines sent to her home address. The claimant asserts that after she realized her mistake, she had requested a manager (Tina) to delete the transaction and had assumed that the transaction had been deleted. The claimant did not provide this explanation to her employer at the time of discharge although she was given an opportunity to do so.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In this matter the evidence in the record establishes that Ms. Feagins accessed and adjusted her own account without the authorization or knowledge of her employer in violation of known company rules. The claimant had not been assigned to the client and had no reason to be “practicing” by entering the account, placing her home address in it and ordering magazines. Ms. Feagins knew or should have known that violation of the company’s adjustment policy could result in her immediate termination from employment. The evidence establishes that the claimant had to use her own ID and identification to enter the account and a factitious name was used, however, the magazines were being delivered to the claimant’s home address. Ms. Feagins did not assert at the time of her discharge that she had attempted to have any other managers or employees delete the transactions. The administrative law judge concludes based upon the evidence in the record that the claimant knowingly violated company policy and her discharge was thus disqualifying.

Although the administrative law judge is cognizant of the claimant’s explanations in this matter, the administrative law judge concludes that the claimant’s explanations strain credibility. The evidence is established in favor of the employer. The employer has sustained its burden of proof in establishing disqualifying misconduct on the part of the claimant.

**DECISION:**

The representative’s decision dated June 4, 2013, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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