

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA J WALLS
Claimant

APPEAL NO. 09A-UI-07163-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**GOVERNMENT EMPLOYEES
INSURANCE COMPANY**
Employer

OC: 04/05/09
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Government Employees Insurance Company (GEICO) filed an appeal from a representative's decision dated April 29, 2009, reference 01, which held that no disqualification would be imposed regarding Barbara Walls' separation from employment. After due notice was issued, a hearing was held by telephone on June 4, 2009. Ms. Walls participated personally. The employer participated by Matt Rivera, Sales Manager; Jeremy Horning, Benefits Specialist/Leave Administrator; and Jody Hospodarsky, Sales Supervisor. The employer was represented by Deb Shelburn of TALX Corporation.

ISSUE:

At issue in this matter is whether Ms. Walls 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. Walls was employed by GEICO from September 27, 2006 until April 7, 2009 as a full-time sales associate. The employer monitored her telephone conversation with a customer from Colorado on April 1, 2009. During the call, the customer indicated she believed she had five speeding tickets on her record. According to the motor vehicle report she had at the time, Ms. Walls could only identify three tickets for which there were convictions. Therefore, she deleted two of the tickets referenced by the customer and provided a quote based on the three convictions. She also failed to change the number of miles by which the customer exceeded the posted speed limit on one of the tickets. The computer records indicated she was going from 1 to 10 miles over while the motor vehicle report indicated she was going from 20 to 29 miles per hour over.

Ms. Walls believed that, for the state of Colorado, only those tickets that were shown as convictions could be used to determine a price quote. She indicated to the employer that she had deleted such tickets in the past when dealing with customers from Colorado. The employer reviewed 40 Colorado calls Ms. Walls had handled between January 1 and April 7, 2009. It was

determined that there were six calls in which the customer's statement and the motor vehicle reports differed as to the number of tickets the customer had received. It was further determined that for five of the calls, Ms. Walls used the numbers provided by the customer rather than the numbers indicated on the report. As a result of her deletion of the two tickets on April 1, Ms. Walls was discharged on April 7, 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). For reasons that follow, it is concluded that disqualifying misconduct has not been established. The administrative law judge does not believe Ms. Walls intentionally deleted tickets from a customer's application for any personal gain that might eventually result. She had a good-faith belief that she could delete the tickets if they did not appear as convictions on the motor vehicle report.

At most, the employer's evidence established that Ms. Walls used poor judgment or was negligent on April 1. The evidence failed to establish any pattern or practice of disregarding the employer's standards or interests. Isolated instances of poor judgment or negligence are not considered disqualifying misconduct. See 871 IAC 24.32(1). While the employer may have had good cause to discharge, conduct that might warrant discharge 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). Inasmuch as substantial misconduct has not been established, benefits are allowed.

DECISION:

The representative's decision dated April 29, 2009, reference 01, is hereby affirmed. Ms. Walls was discharged by GEICO 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/css