

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTENA M WATTERS
Claimant

APPEAL NO. 13A-UI-09093-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES INC
Employer

OC: 07/07/13
Claimant: Respondent (2R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated July 26, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on September 11, 2013. Although duly notified, the claimant did not respond to the notice of hearing and did not participate. The employer participated by Ms. Turkessa Newsome, Human Resource Generalist.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds Kristena M. Watters was employed by APAC Customer Services, Inc. from February 18, 2013 until June 17, 2013 when she was discharged from employment. Ms. Watters was employed as a full-time telephone customer service representative and was paid by the hour.

The claimant was discharged after a company client called and requested that Ms. Watters be removed from their customer service account due to rudeness with a client. Turkessa Newsome, the quality assurance manager and a company manager all reviewed the call tape and determined that Ms. Watters had been extremely rude and unprofessional to the caller and that the claimant had repeatedly cut off the caller causing the call to escalate.

Because the claimant had received extension training and had demonstrated the ability to do her job but had chosen not transfer the call to a supervisor or the escalation team, but instead engaged in rude behavior, a decision was made to terminate Ms. Watters from her employment. The employer considered the matter to be serious as it jeopardized the employer's contract with its client and reasonable alternatives were available to the claimant.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional disqualifying 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 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).

The evidence in the record establishes that the claimant had received extensive training from the company and was aware that she could transfer difficult calls to a supervisor or to the company's escalation team. Instead of following those reasonable alternatives, Ms. Watters engaged in argumentative behavior, repeatedly cutting off the caller causing the caller to complain to the client. As the claimant's conduct jeopardized the employer's contract with its client and was in violation of the training that had been given to her, a decision was made to terminate Ms. Watters from her employment.

There being no evidence to the contrary, the administrative law judge concludes that the employer has sustained its burden of proof in establishing that the claimant's discharge took place under disqualifying conditions.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3-7-a, -b.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated July 26, 2013, reference 01, is reversed. The claimant was discharged under disqualifying conditions. 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. The issue of overpayment of unemployment insurance benefits is remanded to the Claims Section determination of the overpayment and determination of charges to the employer's account.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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