

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER J BOOTH

Claimant

APPEAL NO. 13A-UI-07489-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PERSONAL COMMUNICATION SALES INC

Employer

OC: 05/19/13

Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Jennifer Booth, filed an appeal from a decision dated June 13, 2013, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 30, 2013. The claimant participated on her own behalf and was represented by Iowa Legal Services in the person of Nadia Igram. The employer, Personal Communication Sales, Inc., (PCS) participated by Director of Sales Nick Grafft.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Jennifer Booth was employed by PCS from April 20, 2011 until July 7, 2013 as a part-time sales consultant. She was placed on probation on January 17, 2013, for invoicing a customer who was a personal friend. Invoicing of customers is not appropriate unless it is a business customer with prior arrangements with the employer. She had also been verbally counseled about chronic tardiness and absenteeism.

On May 17, 2013, a customer alleged the claimant had come to the customer's place of work and engaged in a verbal altercation with her. Police were summoned and the report was based solely on the customer's statements and noted the claimant was not present when the officer arrived. The officer never interviewed the claimant and no charges were filed.

The employer did an investigation when the customer complained about the claimant improperly releasing confidential information. It was determined this allegation was not founded. Ms. Booth was interviewed on July 3, 2013, and denied she had gone to the customer's place of work and was not involved in an altercation because she was sick with strep throat. Director of Sales Nick Grafft only talked with the police officer on May 20, 2013, whom he alleged told him the claimant had made a statement in his presence that she was "going to fuck her up" in reference to the customer.

Due to various missed messages and such a meeting was not held between the claimant and employer until July 3, 2013, which was when she denied accosting the customer. She was discharged because the employer found the word of the police officer more credible than her denial.

REASONING AND CONCLUSIONS OF LAW:

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 to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The incident which precipitated the discharge was the allegation of a confrontation with a customer. The claimant has not only denied the incident but quoted the police report which stated she was not present at the time the officer arrived in response to the complaint. The employer asserted the police officer stated to him the claimant had made a threat against the customer in his presence. These are inconsistent with each other.

The employer having the burden of proof could have submitted a copy of the report for the hearing but did not do so. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is

not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which she was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The representative's decision of June 13, 2013, reference 02, is reversed. Jennifer Booth is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css