IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MICHAEL H PEREZ
Claimant

QWEST CORPORATION
Employer

APPEAL NO. 07A-UI-03348-CT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/04/07 R: 02
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Qwest Corporation filed an appeal from a representative's decision dated March 19, 2007, reference 01, which held that no disqualification would be imposed regarding Michael Perez' separation from employment. After due notice was issued, a hearing was held by telephone on April 19, 2007. Mr. Perez participated personally and was represented by Jim Perkey, Communications Workers of America Local #7102. The employer participated by Michael DiMarco, Manager of Network Operations, and by Cathy Stephens, Jill Sills, and Tracie Sargent, Supervisors in Network Operations. The employer was represented by Terry Newman of Barnett Associates, Inc.

ISSUE:

At issue in this matter is whether Mr. Perez was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Perez was employed by Qwest Corporation from November 29, 1993 until February 5, 2007. He was employed full time as a screening consultant. His discharge was prompted by the fact that he left his phone unattended for approximately two minutes on February 1, 2007. As such, he was not available to take incoming calls. He should have changed his phone status to "not ready" before leaving his station. He told a supervisor he thought he had done so. Mr. Perez left his work station to find a telephone number to relay to a customer he had spoken to a day or two earlier. While he was away, he had a brief exchange with a coworker about the Iowa Hawkeyes.

Mr. Perez had received a written warning on January 11, 2007. The warning addressed several issues, including sleeping on the job. He was observed sleeping on three occasions but did not have a medical reason for sleeping at work. He attributed his sleeping to the fact that he was tired. The warning also addressed the fact that he was eating while talking to customers. Mr. Perez acknowledged that he was eating at his station but failed to confirm that the customer was on hold while he was eating popcorn. The warning addressed Mr. Perez' failure to work

overtime on 11 occasions. He could not work the overtime because he was helping to care for his father.

The January 11 warning also recited problems with Mr. Perez' job performance. He failed to meet the performance objectives of his job with respect to the amount of time it took to handle calls and the amount of time he was available for calls. As of December 31, 2006, he averaged 336 seconds per call while the standard was 335 seconds per call. The employer expected him to be available for calls 87 percent of the time. As of December 31, 2006, Mr. Perez was only available 83.2 percent of the time. Finally, the warning addressed his unsatisfactory attendance. All of his absences were reported to be for illness.

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). Before a disqualification may be imposed, the evidence must establish that the discharge was predicated on a current act that constituted misconduct within the meaning of the law. See 871 IAC 24.32(8). In the case at hand, Mr. Perez' discharge was prompted by the fact that he was away from his workstation for two minutes on February 1. He left his station to get a phone number but failed to make sure his phone was set to "not ready." Although there may have been a brief exchange in passing about a non-work-related matter, the administrative law judge cannot conclude that discussing the Hawkeyes was the initial reason for Mr. Perez leaving his work station or that he spent the two minutes talking about the Hawkeyes.

The failure to make sure his phone was set to "not ready" constituted no more than an isolated instance of negligence. The evidence failed to establish that it was an intentional and deliberate violation of the employer's standards. For the above reasons, the administrative law judge concludes that there was no act of misconduct on February 1.

Mr. Perez had received a written warning on January 11 due to several problems with his performance and conduct at work. The employer did not allege any intervening acts of misconduct between January 11 and February 1. Conduct for which he was warned three weeks prior to the discharge would not represent current acts in relation to the February 1 discharge date. For the reasons cited herein, the administrative law judge concludes that the employer has failed to satisfy its burden of proving that Mr. Perez was discharged for a current act of misconduct. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated March 19, 2007, reference 01, is hereby affirmed. Mr. Perez was discharged but a current act of misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

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Carolyn F. Coleman
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs