

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIDGET K VANCE
Claimant

APPEAL NO. 11A-UI-10456-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES OF IOWA
Employer

OC: 07/03/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Apac Customer Services of Iowa filed a timely appeal from a representative's decision dated July 25, 2011, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on August 30, 2011. The claimant participated personally. The employer participated by Ms. Rochelle Jordan, Human Resource Generalist and Ms. Kim McFarlan, Supervisor.

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: Bridget Vance was employed by Apac Customer Services of Iowa from November 2, 1999 until June 28, 2011 when she was discharged from employment. Ms. Vance worked as a full-time customer service representative, working at home, and was paid by the hour. The claimant performed telephone customer service work. The claimant's immediate supervisor was Kim McFarlan.

A decision was made to terminate Ms. Vance based upon a client complaint that Ms. Vance had been rude and had disconnected on a caller on or about June 17, 2011. The caller had alleged to the client company that Ms. Vance was "rude" because the claimant was not willing to provide a fax number of a doctor's office during the call. Ms. Vance had been instructed by a previous supervisor not to provide this information to callers and the claimant believed that she was following company procedures.

The call in question ends after the caller requests that Ms. Vance either provide the doctor's office fax number or connect the caller with Ms. Vance's supervisor. Because the claimant did not place a memorandum in the company's computer system about a disconnect, the employer believed that Ms. Vance had failed to follow company policy and believed that the claimant had disconnected on the caller in violation of the employer's guidelines and policies.

It is the claimant's position that she was not rude to the caller but that she was following the company procedures as she understood them. Ms. Vance denies disconnecting the caller. Ms. Vance did not enter a memorandum in the company's computer system at the time as it appears, she did not conclude that a disconnect had occurred.

Before the incident in question, the claimant had not been warned nor counseled by the employer for any violation of any company policies.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is not.

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. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). 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 the case at hand, Ms. Vance was discharged based upon a client company's complaint to Aflac Customer Services of Iowa that Ms. Vance had been rude to a caller and had disconnected on the caller. After reviewing the recording, the employer concluded that Ms. Vance had been "rude" because she had not provided the fax number of the doctor's office when requested to do so. In contrast Ms. Vance testified that she had been previously instructed not to provide this information and that she was attempting to follow company policy as she understood it. The employer further concluded that because the call ended and Ms. Vance had not placed a memorandum in the company's computer system that the claimant must have disconnected. The evidence in the record does not support that conclusion.

The audio tape of the call in question, although available ,was not offered into evidence either by tape recording of the call or by written transcript.

The administrative law judge concludes based upon the evidence in the record that the claimant's attempt to follow company procedure as she understood it did not rise to the level of intentional rudeness and the evidence in the record does not establish sufficiently that the claimant intentionally disconnected the call. The administrative law judge notes that the claimant was a long-term employee and had never received any previous warnings or counselings by the employer for failure to follow company policies.

The question before the administrative law judge is not whether the employer has a right to discharge an employee for these reasons but whether the discharge is disqualifying under the provisions of Employment Security Law. While the decision to terminate Ms. Vance may have been a sound decision from a management viewpoint, the administrative law judge concludes that the evidence in the record does not establish misconduct sufficient to warrant the denial of unemployment insurance benefits. The administrative law judge finds the claimant to be a credible witness and finds that her testimony is not inherently improbable. Misconduct sufficient to warrant the denial of unemployment insurance benefits has not been established. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated July 25, 2011, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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