

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PENNY T HORNE**  
Claimant

**APPEAL NO: 06A-UI-08338-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COMMUNICATIONS DATA SERVICE INC**  
Employer

**OC: 07/09/06 R: 01**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Communications Data Service (employer) appealed a representative's August 11, 2006 decision (reference 01) that concluded Penny Horne (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 5, 2006. The claimant was represented by Michael Winter, Attorney at Law, and participated personally. The employer participated by Sharon Kroger, Human Resources Administrative Senior Manager; Sue Grummert, Senior Manager Over Customer Service; and Linda Vogt, Customer Service Manager.

**ISSUE:**

Whether the claimant was not eligible to receive unemployment insurance benefits due to a discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 11, 2005, as a full-time internet customer service representative. The claimant was required to answer internet inquiries by sending out a letter to the customer. The employer had approximately 100 different letters. Thirty of those letters were used frequently and employees referred to those letters as "The Bible." The employer changed programs every two months and a different set of conditions was imposed on employees. The claimant was supposed to score 85 percent as a minimum on a quality standard. Employees were unable to explain any objective standards by which an employee would be measured on that standard. In addition employees had to meet an ever increasing number of responses by letter that the employer called the "tally." The number relates to amount of responses per hour.

The employer issued the claimant a warning on June 2, 2006, for having 17.4 tallies and 60 percent on the quality scale. The claimant was supposed to have 21 tallies and the minimum

85 percent on the quantity scale. On June 8, 2006, the employer issued the claimant a written warning for having 15 tallies when she was supposed to have 24 and scoring 70 percent on the quality scale. On June 14, 2006, the claimant received a written warning for having a tally of 25 and a quantity of 80 percent. The employer set the claimant's tally for 27. The employer issued the claimant a final written warning on June 23, 2006, for having a tally of 22 and a quantity percentage of 80. The tally for this week was set at 33.

In an effort to increase her performance standards the claimant asked co-workers for advice, studied "The Bible" on the weekends and tried to discover shortcut keys on the computer. The employer offered to have someone sit with the claimant at her workstation. The claimant declined because she knew it would lower her tally and the employer complained about the cost of having someone sit with the claimant.

The employer terminated the claimant on July 10, 2006, for having a tally of 24.74 instead of the 32 required.

### **REASONING AND CONCLUSIONS OF LAW:**

For the following reasons the administrative law judge concludes she was not discharged for misconduct and, therefore, is eligible to receive unemployment insurance benefits.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988). The employer discharged the claimant for poor work performance and has the burden of proof to show evidence of intent. The employer did not provide any evidence of intent at the hearing. The claimant's poor work performance was a result of constant change in the program and unrealistic expectations by the employer. The employer testified that the claimant "tried to the best of her ability." The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's August 11, 2006 decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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