

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

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QWEST CORPORATION  
c/o EMPLOYERS UNITY INC  
PO BOX 749000  
ARVADA CO 80006-9000

Appeal Number: 06A-UI-05472-SWT  
OC: 04/30/06 R: 02  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 18, 2006, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on June 13, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Scott Hogue. Marcy Schneider participated in the hearing on behalf of the employer with a witness, Anne Rodriguez. Exhibits One and Two were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full-time for the employer as a customer service representative from April 13, 1999 to April 17, 2006. The claimant was informed and understood that under the employer's work rules, gross customer abuse was grounds for discipline, up to and including dismissal. The rules define gross customer abuse as unreasonable behavior that demonstrates

an intentional disrespect or disregard of a customer, including intentionally cutting off a customer, using profane language, racial slurs, sexual remarks or similar conduct toward a customer. The claimant had been counseled and warned about her productivity and the quality of her calls, but had never been disciplined for customer abuse or rude treatment of a customer.

On April 4, 2006, the claimant's calls were monitored. During one call, the claimant left a customer on hold for a substantial period of time while she tried to contact a repair employee that she believed could competently assist the customer. She hung up on several repair employees who she did not believe were capable of helping the customer. Ultimately the claimant resolved the problems to the customer's satisfaction.

During a second call on April 4, the claimant was faced with a customer who questioned being charged shipping for a DSL modem that had been shipped to the customer. The customer became upset with the explanation the claimant provided and demanded to speak to a supervisor. She tried to convince the customer that she could handle the problem. She did not respond immediately when the customer insisted that she talk to a supervisor or when the customer asked for her name and badge number. She nervously laughed when the customer told her that it was against the law not to elevate her call to a supervisor. The customer ended up hanging up on the claimant. The employer does not have express policy that mandates that calls be transferred to supervisor on demand from a customer, but instead, it depends on the circumstances of the case.

The claimant was discharged on April 17, 2006 for committing gross customer abuse in regard to the manner in which she handled the two calls on April 4.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

No willful or substantial misconduct has been proven in this case. The claimant had an isolated lapse of judgment in the call involving the DSL modem. She was not deliberately rude toward the customer. She made an error in nervously laughing when the customer said she was violating the law by not transferring the call to a supervisor, but in light of the lack of any record of harsh treatment of customers in the past, no disqualifying misconduct has been proven. The other call amounted to unsatisfactory work, which did not rise to the level of work-connected misconduct under the unemployment insurance law.

#### DECISION:

The unemployment insurance decision dated May 18, 2006, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/cs