

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER R GEORGE
Claimant

APPEAL NO: 11A-UI-10738-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOVERNMENT EMPLOYEES INSUR CO
Employer

OC: 07/17/11
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's August 5, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Richard Clinesmith represented the employer. Andrew Vaughn, the human resource supervisor, and Eric Dale, the customer service manager, testified on the employer's behalf. During the hearing, Employer Exhibits One through Seven and Claimant Exhibit A were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in September 2006 as a sales representative. In August 2008, the employer transferred the claimant to work as a full-time service representative. The employer requires service representatives to maintain a minimum 80 percent score on the calls the employer monitors. The claimant handles 50 to 60 call a day. The employer reviews 20 calls a month to make sure service representatives are performing their job satisfactorily.

In 2010, the claimant had a score of 80 percent or better for five months. (Employer Exhibit Four.) The employer continually coached her so she would perform her job satisfactorily. (Employer Exhibits Five, Six and Seven.) After months of coaching, the employer gave the claimant a written performance improvement plan on March 18, 2011. As of March, the claimant had a quality rating of 73 percent. (Employer Exhibit Two.)

After the claimant received the March work improvement plan, her quality percent went down to 70 percent. The employer gave the claimant a May 12 written warning for failing to meet the employer's minimum job performance standards. This warning informed the claimant that if she

did not meet and maintain the 80 percent quality score, she could be discharged. (Employer Exhibit One.)

When reviewing the reasons for the claimant's unsatisfactory job performance, 70 percent of the claimant's error involved her failure to tell a customer about something she was required to mention. (Employer Exhibit Three.) In June 2011 the claimant failed six out of the 20 calls monitored. Two of these failed calls occurred because the claimant did not mention something to a customer even though the computer reminded the claimant she needed to tell a customer something. Although the claimant understood her job was in jeopardy, there were times she intentionally did not tell a customer about something because she assumed the customer wanted to end the call. If the claimant had made an attempt to mention something on the two monitored calls in June, she would have had a score of 80 percent instead of 70 percent.

On July 14, 2011, the employer discharged the claimant because she failed to meet the employer's minimum performance standards by failing to tell a customer something.

The claimant established a claim for benefits during the week of July 17, 2011.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant asserted because her supervisor failed to give her call maps she was unable to meet the employer's minimum performance standards. (Claimant Exhibit A.) The claimant's assertion is not supported by the evidence. Even though the claimant understood her job was in jeopardy and noticed co-workers had the call maps she wanted, she did not copy any of her co-workers' call maps or mention this fact to her supervisor. While the call maps would have provided a check list for the claimant to follow, the pop-ups on her computer provided these same checklists that the claimant at times chose to ignore. The claimant admitted there were times she intentionally failed to tell a customer something because she concluded the customer wanted to get off the phone. Since the claimant made the decision to ignore some information she knew the employer required her to tell a customer about, this conduct amounts to work-connected misconduct especially after the employer warned her that her job was in jeopardy. As of July 17, 2011, the claimant is not qualified to receive benefits.

An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment of benefits she may have received since July 17, 2011, will be remanded to the Claims Section to determine.

DECISION:

The representative's August 5, 2011 determination (reference 01) is reversed. The claimant's decision to end a call before she provided information the employer required her to tell a

customer amounts to an intentional and substantial disregard of the employer's interests or work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of July 17, 2011. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment of benefits she may have received since July 17, 2011, is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css