

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**THERESA L POOLE**  
Claimant

**APPEAL NO. 14A-UI-07944-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THOMAS L CARDELLA & ASSOCIATES  
INC**  
Employer

**OC: 07/13/14**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated July 30, 2014, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on August 25, 2014. The claimant participated. Although the employer was duly notified, they did not respond to the notice of hearing and did not participate.

**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:**

Having considered all the evidence in the record, the administrative law judge finds: Theresa Poole was employed by Thomas L. Cardella & Associates from March 2014 until July 14, 2014 when she was discharged from employment. Ms. Poole was assigned to a client call center project making outbound calls for subscribers to renew their Wall Street Journal subscriptions. Ms. Poole was paid by the hour. Her immediate supervisor was Ian Walker.

Ms. Poole was discharged on July 14, 2014 when the employer alleged Ms. Poole had not been following call procedures and had incorrectly handled a call where the subscriber had requested that their telephone number be taken off the call list. Ms. Poole had received little training in outbound call procedures. The claimant had specifically requested to be assigned to inbound calls at the time of hire and had received training for only inbound call procedures. On the day that the call had taken place, Ms. Poole had numerous calls and had to quickly choose one of twenty-two choices to categorize and complete the call. The claimant attempted to the best of her ability to follow the procedures as she understood them. The employer would not replay the call in Ms. Poole's presence or specify exactly what her error had been. Although the claimant had received other warnings from the company, she had not been warned for failure to follow call procedures in the past.

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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 benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant a denial of unemployment insurance benefits. Such misconduct must be "substantial." When based upon carelessness the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa 1988).

In the case at hand the evidence does not establish that Ms. Poole engaged in intentional disqualify misconduct in this matter. The claimant was discharged when she could not meet the

employer's expectations through no fault of her own. Unemployment insurance benefits are allowed providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated July 30, 2014, reference 01, is reversed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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