

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DOTTIE L CHRISTOPHE**  
Claimant

**THOMAS L CARDELLA & ASSOCIATES INC**  
Employer

**APPEAL 19A-UI-07631-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/04/18  
Claimant: Respondent (1)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Thomas L Cardella & Associates (employer) appealed a representative's September 17, 2019 decision (reference 02) that concluded Dottie Christophe (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 scheduled for October 21, 2019. The claimant participated personally. The employer was represented by Alyce Smolsky, Hearings Representative, and participated by Myka Gilchrist, Senior Human Resources Manager. The administrative law judge took official notice of the administrative file.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**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 November 19, 2018 as a full-time customer care agent. She signed that she read the employer's policies on November 19, 2018. The claimant did not receive a copy of the employer's handbook. The employer did not issue the claimant any warnings during her employment.

On September 3, 2019, at about 12:50 p.m. the claimant was experiencing a panic and anxiety attack after taking "rough calls" where customers cussed at her. The claimant finished her call, raised her hand, and told her supervisor she was not feeling well. She was crying, shaking, and experiencing chest pains. She told her supervisor she needed to get away from the situation for a while and clock out. The claimant had given the employer doctors notes in January, February, and March 2019, indicating she had been diagnosed with panic and anxiety disorder.

The claimant went outside for a time and later went to the lobby area. She asked the receptionist for a document to report the work-related condition. The claimant believed that the work environment was triggering her symptoms and she needed to report it. The senior human resources manager, Ms. Gilchrist, approached her in the lobby and started to ask her questions.

Ms. Gilchrist did not have any medical training but did notice that the claimant was talking to herself and breathing heavily. The questioning caused the claimant's condition to escalate. Ms. Gilchrist asked the claimant about calling her emergency contact person. The claimant refused because her emergency contact person was sleeping. Ms. Gilchrist thought the claimant was "very rude". No medical staff was called to evaluate the claimant. The claimant completed a first report of injury and drove herself to a pharmacy.

Approximately two hours later, the claimant returned to work feeling somewhat better. She clocked in and took a few calls. The employer called her into an office and terminated her for lack of professionalism on September 3, 2019. Ms. Gilchrist told the employer that an employee heard the claimant call the manager "a bitch". The claimant denied the accusation.

The claimant filed for unemployment insurance benefits with an effective date of November 4, 2018. The employer's representative, Jada Curry, provided Myka Gilchrist's name as the person who would participate in the fact-finding interview on September 16, 2019. It did not provide Ms. Gilchrist's number. The fact finder called Jada Curry, but she was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The representative did not respond to the message. The employer provided some documents for the fact finding interview. A statement by Ms. Gilchrist said, "At that point, Dottie stormed out of the building yelling, "I can't believe these stupid mother fuckers are going to ask me if I need a cab! This is highly against TLC Associate Professionalism policy and consistently has been grounds for termination".

On October 21, 2019, Ms. Gilchrist testified that in a populated area she heard the claimant say, "I can't believe these stupid mother fuckers are going to offer me a cab". An office worker heard the claimant say, "Wow, that girl's really a smart one, isn't she?" Ms. Gilchrist said she did not hear the statement but the claimant laughed after making it and the statement referred to Ms. Gilchrist. The claimant was terminated for making the two statements. The claimant denied the accusations.

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

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The employer provided first-hand testimony at the hearing that was internally inconsistent. The witness's statement on September 3, 2019, written statement for the fact-finding interview, and testimony for the appeal hearing were different. Therefore, the employer did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's September 17, 2019, decision (reference 02) is affirmed. The employer has not met its burden of proof to establish job related misconduct. 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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