

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JACQUELINE D MONROE**  
Claimant

**APPEAL NO: 11A-UI-05332-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEARS ROEBUCK & COMPANY**  
Employer

**OC: 03/20/11  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Sears Roebuck & Company (employer) appealed a representative's April 11, 2011 decision (reference 01) that concluded Jacqueline D. Monroe (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 17, 2011. The claimant participated in the hearing. Bridget Clark appeared on the employer's behalf and presented testimony from one other witness, Alex Hallums. During the hearing, Employer's Exhibits One and Two were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on September 17, 2007. After about two years working in another department, as of about October 2010 she worked full time as a call center representative in the employer's West Des Moines, Iowa call center. Her last day of work was March 21, 2011. The employer discharged her on that date. The reason asserted for the discharge was an ethics violation of intentional work avoidance.

The claimant had received a first and final warning on December 2, 2010 for intentional work avoidance when she was supposed to be taking in bound calls. However, the employer's technical department had not coded her system to accept inbound calls. While the claimant realized this was the case, she did not report the problem to management, and thereby avoided taking calls all day, although at some point during the day she started taking inbound on-line chats, which her system had been coded to accept.

On March 13 the employer asserted the claimant intentionally avoided work by inappropriately handling three online chats. On one, the claimant had given the customer a store phone number for the customer to call to check on an item, but had not made the call to the store

herself. The employer asserted that it was policy that the representative contact the store themselves; however, this was not a written policy and the employer could not establish how the claimant was to have known she was specifically required to contact the store directly. On another, the question the customer was raising was a technical question regarding the operation of a washer; the claimant deferred answering by online chat, indicating to the customer that this was a difficult question to respond to via chat and suggesting that the customer call in to speak to a representative by phone. The claimant had seen this suggestion in a standard response form at sometime during the time since October she had been in the department.

On a third chat, the claimant was working through with a customer regarding the ordering of a new washer and got to a point where the customer needed to leave the computer to go and check measurements. The claimant waited about two minutes for the customer to return to the computer, and then sent a message to the customer that she needed to close the chat but that the customer could resume a chat with another representative or call in to complete the order when the customer returned to the computer. The claimant could have waited at least another 30 seconds under the employer's policies. The claimant did have her system set to block other chats while working on this chat and had been advised just that day that she needed to work on reducing her "away" time down. She also was supposed to be able to conduct two simultaneous chats, which she found to be very difficult.

The employer had not given the claimant any prior discipline regarding the specific manner in which the claimant had handled individual calls or chats. Because the employer concluded that the claimant had abruptly handled these chats in an effort to avoid work, the employer determined to discharge the claimant.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her handling of the chats on March 13, which the employer concluded was an intentional effort to avoid work. Misconduct connotes volition. Huntoon, supra. While the claimant may not have been “going the extra mile” to address the issues or concerns of these particular customers on that day, she was acting under a good faith belief that she was working within acceptable parameters. She had not previously been advised that she was being too abrupt in how she handled customers’ issues. Under the circumstances of this case, the claimant’s handling of the chats on March 13 was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant’s actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative’s April 11, 2011 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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