

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEPHANIE D GONZALEZ**  
Claimant

**APPEAL NO: 15A-UI-00487-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TMONE LLC**  
Employer

**OC: 12/21/14  
Claimant: Respondent (4)**

Iowa Code § 96.5(2)a – Discharge  
Iowa Code § 96.5(1)a – Voluntary Quit

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's January 7, 2015 (reference 01) determination that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated at the February 5 hearing. Pamela Kostelnik, the human resource representative, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the claimant voluntarily quit her employment on June 23, 2014 for reasons that qualify her to receive benefits?

Did the employer discharge the claimant on November 18, 2014 for reasons that constitute work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer worked as a full-time agent/telemarketer in August 2013. The claimant considered herself good employee but resigned with no notice on June 23, 2014. The claimant thought another employer was going to hire her but she was not hired.

The claimant talked to the site manager, S.F., and asked if the employer would rehire her. The employer rehired the claimant on July 14, 2014. The employer hired the claimant to again work as a full-time telemarketer. After the employer rehired her, S.F. gave the claimant sales expectations but the claimant did not meet these expectations. The claimant did not initially understand the employer was not satisfied with her sales. The claimant helped new agents with sales.

At the end of October the employer placed the claimant on a performance improvement plan and required her to make one sale a day. When the claimant did not have any sales in November, the employer discharged her on November 18 for failing to meet her job expectations or goal.

Although the employer's quality assurance department identified a call in September where the claimant left a line open and a call on November 15 where the claimant hung up on a customer, the employer did not talk to the claimant about these incidents or tell her she was discharged for either of these incidents.

After the claimant was rehired on July 14, ERC bought the employer. Kostelnik took over personnel matters in October 2014.

The claimant established a claim for benefits during the week of December 21, 2014. The claimant's maximum weekly benefit amount is \$317. She filed for and received benefits since December 21, 2014. The employer participated at the fact-finding interview.

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

In this case there are two employment separations - one occurred on June 23, 2014 and the other on November 18, 2014.

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. On June 23 the claimant voluntarily quit because she thought another employer was going to hire her. The other employer did not hire her.

When a claimant quits, she has the burden to establish she quit for reasons that qualify her to receive benefits. Iowa Code § 96.6(2). When the claimant did not have another job, she only thought she had another job. On June 23, 2014 the claimant quit this employment for reasons that would not qualify her to receive benefits. When a claimant quits without good cause, the employer's account will not be charged. Iowa Code § 96.7(2). The employer's account is exempt from charge based on wages the claimant earned from August 2013 through June 30, 2014.

The employer rehired the claimant on July 14, 2014. The record established the claimant earned more than ten times her weekly benefit amount between July 14 and November 18, 2014. As a result, if the November 18 employment separation is for non-disqualifying reasons, the claimant would be eligible to receive benefits as of December 21, 2014.

On November 18 the employer discharged the claimant. 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 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant on November 18. The claimant's testimony that the employer did not talk to her about the phone incidents in September and November 15, 2014 is credible. When the employer discharged her the only reason the employer gave the claimant was because of performance issues – she did not meet her sales goals. The facts do not establish that the claimant intentionally failed to meet her sales goals. She did not commit work-connected misconduct. As of December 21, 2014 the claimant is qualified to receive benefits. The employer's account, based on wage credits the claimant earned since July 14, 2014 is subject to charge.

**DECISION:**

The representative's January 7, 2015 (reference 01) determination is modified in the employer's favor. Since the claimant voluntarily quit her employment on June 23, 2014 for reasons that would not qualify her to receive benefits, the employer's account will not be charged based on wages credits the claimant earned from August 2013 through June 30, 2014. The employer discharged the claimant for business reasons that do not amount to work-connected misconduct on November 18, 2014. The claimant is qualified to receive benefits as of December 21, 2014, provided she meets all other eligibility requirements. The employer's account is subject to charge based on wage credits the claimant earned since July 2014.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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