

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA J SCHARES
Claimant

APPEAL NO. 11A-UI-12854-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE CBE GROUP INC
Employer

**OC: 08/28/11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 21, 2011, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on October 21, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, E.J. Gallagher, Attorney at Law. Mary Phillips participated in the hearing on behalf of the employer with witnesses, Misty Reinard and Chrissy Peters. Exhibits One, Two, and Three and A were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer from June 2, 2008, to August 30, 2011. For the last year, she worked a collector. As a collector, she knew she was subject to the Fair Debt Collection Practices Act and received training on FDCPA. She was informed and understood that under the employer's work rules, an employee was subject to discharged if they had three written warnings in six months.

On July 21, 2011, the claimant was warned about her attendance, missed time punches, and late breaks. Most of the absences were due to a family medical emergency.

The claimant had received a verbal warning on August 10, 2011, and a written warning on August 11 after she was monitored (1) not verifying a customer's identity by verifying first name, last name, and address or social security number before disclosing the purpose of her call and (2) not marking an account as disputed when the customer disputed part of the debt owed. These would be violations of the FDCPA. She was warned that further infractions could result in termination.

In August 2011, the claimant noticed she was having some problems with her memory, including work procedures. She thought it was due to health conditions she had or the

medication she was taking to deal with the conditions. On August 12, she notified her supervisor about her symptoms and concerns that it might be affecting her job performance. She told her supervisor that she was going to contact her doctor to see if her medication could be changed. The claimant did try to get an appointment with her doctor, but the doctor was not available. She was not able to get her medication changed before she was discharged.

On August 22, the claimant spoke to a customer about a debt before going through the mandated process of verifying the customer's identity by verifying first name, last name, and address or social security number, which was a FDCPA violation. On August 26, the claimant set a payment on an account with a customer but did not document the conversation in the account notes. She had walked away from her desk to ask a supervisor about something regarding the account, and when she returned, she immediately had calls coming in and she forgot to go back and document the account.

Around August 30, management audited the claimant's calls and the transactions on August 22 and 26 were discovered. As a result, the employer discharged the claimant on August 31 due to receiving three written warnings in six months.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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 substantial and 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).

871 IAC 24.32(8) provides: "While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act."

No willful misconduct has been proven in this case. There is no evidence that the final infractions involved the claimant deliberately choosing to forego verification or deliberately avoiding documenting information on the account. The question then is whether the negligent conduct involved repeated carelessness or negligence that equals willful misconduct in culpability. In light of the claimant's evidence that she was suffering from health-related memory problems that she reported to her supervisor, it appears that the claimant's negligence was a

failure in good performance as the result of inability, rather than reckless conduct that would equate to willful misconduct.

DECISION:

The unemployment insurance decision dated September 21, 2011, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css