

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASMINE N BALTIMORE
Claimant

APPEAL NO. 12A-UI-06189-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES OF IOWA
Employer

OC: 04/29/12
Claimant: Respondent (2R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Apac Customer Services of Iowa filed a timely appeal from a representative's decision dated May 16, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on June 20, 2012. Although duly notified, the claimant did not participate. The employer participated by Ms. Turkessa Newsome, Human Resource Generalist.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Jasmine Baltimore was employed by Apac Customer Services of Iowa from November 8, 2010 until April 18, 2012 when she was suspended and subsequently discharged from employment. Ms. Baltimore was employed as a full-time customer service representative and was paid by the hour. Her immediate supervisor was Jackie Atkins.

Ms. Baltimore was discharged when she became involved in a verbal altercation on the company's calling floor. During the verbal exchange with another worker Ms. Baltimore directed inappropriate language at the other worker in violation of known company policies. When questioned by management Ms. Baltimore admitted using profanity on the work floor in violation of company rules. Under established company policies employees are aware that they can be discharged for the use of profanity or inappropriate language on the call floor.

REASONING AND CONCLUSIONS OF LAW:

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 insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational disrespectful of name-calling context may be recognized as misconduct disqualifying the employee from the receipt of unemployment insurance benefits. See Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). The use of foul language alone can be sufficient grounds for a misconduct disqualification for unemployment benefits. Warrell v. IDJS, 356 N.W.2d 587 (Iowa App 1984).

The evidence in the record establishes that the claimant was discharged for using profanity on the work floor during a verbal confrontation with another employee. Other workers heard the confrontation and the claimant's use of inappropriate and offensive language could potentially be overheard by customer clients and callers.

Based upon the application of facts to the law the administrative law judge concludes that the employer has sustained its burden of proof in establishing the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated May 16, 2012, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in

and been paid wages for insured work equal to ten times her weekly benefit amount and otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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