

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERESA A JAMES
Claimant

APPEAL NO: 06A-UI-08544-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

OC: 07-23-06 R: 02
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 17, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 12, 2006. The claimant did participate. The employer did participate through Paula Boozell, Team Leader and Brad Greg, Tele Sales Manager and was represented by Rachael Trafican of TALX UC eXpress.

ISSUES:

The issue is whether the claimant was discharged for work related misconduct?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the a full-time beginning October 27, 2003 through July 24, 2006 when she was discharged. The claimant was discharged for violating the employer's policy regarding 'camping' on phone calls. An employee camps on a phone call when they transfer the customer to another coworker, often in another department, but do not hang up the call themselves, but instead remain on the line listening to the phone call. At hearing it was clear that the claimant understood what camping was and that it was not allowed by the employer. When an employee camps on a phone call, they are not available to take a call from another customer. There was no need for the claimant to remain on the call she transferred on July 20, 2006. The employer periodically reviews a number of calls to check for quality and employee performance. On the call of the claimant's on July 20, 2006 which was reviewed on July 24, 2006, the employer discovered that the claimant transferred a customer to the billing department, then without saying anything else, she remained on the call for the remaining six minutes and twenty-two seconds it took her coworker to finish the call. The claimant was allowed to and did listen to the call with her managers when they questioned her about the call, but she was unable to offer any explanation as to why she remained on the call. There was no business purpose or reason for the claimant to remain on the call. By remaining on the call or camping, the claimant did not have to take another call from a customer, but her downtime percentage or ready for call percentage was not negatively affected.

The claimant had been trained on the prohibition against camping on June 8, 2005. The claimant had previously been disciplined for camping on March 6, 2006 when the employer listened to another of her calls and discovered she was camping on line. On March 28, the claimant was disciplined for a second instance of camping during that month. During a follow-up meeting with the claimant on April 21, 2006 she was warned that if she was caught camping on a call again, she could be discharged.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

871 IAC 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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant knew that camping on phone calls was prohibited conduct. She had been previously warned about the same conduct in March and in April was told that if she was caught camping again she would be discharged. The employer has established that the claimant camped for over six minutes on a phone call on July 20. The claimant had no business reason

for remaining on the phone call. The claimant received fair warning that the employer was no longer going to tolerate her performance and conduct that is, her camping on phone calls. The claimant knew that if she wanted to preserve her employment that she was not to camp on any phone calls. The employer's evidence does establish that the claimant deliberately and intentionally acted in a manner she knew to be contrary to the employer's interests or standards. There was a wanton or willful disregard of the employer's standards. In short, substantial misconduct has been established by the evidence. The claimant's instance of camping on July 20 in conjunction with her previous discipline for the same or similar conduct constitutes disqualifying misconduct. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The August 17, 2006, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,080.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/cs