

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**KATE I REILING  
1229 – 20<sup>TH</sup> ST SW  
CEDAR RAPIDS IA 52404**

**GOVERNMENT EMPLOYEES  
INSURANCE COMPANY  
c/o EMPLOYERS UNITY INC  
PO BOX 749000  
ARVADA CO 80006-9000**

**Appeal Number: 04A-UI-01260-HT  
OC: 01/04/04 R: 03  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant, Kate Reiling, filed an appeal from a decision dated February 3, 2004, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on February 26, 2004. The claimant participated on her own behalf. The employer, Government Employees Insurance Company (GEICO), participated by Human Resources Supervisor Tina Kueter and Customer Service Supervisor Betty Dizard. The employer was represented by Employers Unity in the person of Emily Ault.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Kate Reiling was employed by GEICO from October 5, 1998 until January 7, 2004. She was a full-time customer service agent.

Ms. Reiling had been at a Level 62 for approximately two years, this is a senior level agent. All agents at this level have identical goals as far as customer service and performance percentages. She met these goals the majority of the time in 2002, however her performance began to decline in 2003. On October 8, 2003, she was placed on a performance improvement plan where she was to do 85 percent of the "A Calls" and to refer at least 20 customers for a special "umbrella" coverage. She did improve her levels but did not meet the actual goals by November 13, 2003. She was placed on a final written warning and the performance improvement plan was extended through December 2003.

On January 7, 2004, Customer Service Supervisor Betty Dizard and Service Manager Steve Kelly met with the claimant and informed her that she had not met the goals and was discharged.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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 was capable of performing her job at a level required by the employer. This is evidenced by the fact she had met these goals the majority of the time during 2002. Her failure to meet the same goals in 2003 does not appear to have been caused by any change in expectations, job duties or performance levels. Failure to work to the best of one's ability is conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of February 3, 2004, reference 01, is affirmed. Kate Reiling is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible.

bgh/kjf