

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT W WATTS**

Claimant

**APPEAL NO. 14A-UI-13224-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APAC CUSTOMER SERVICES INC**

Employer

**OC: 11/16/14**

**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

APAC Customer Services, Inc. filed a timely appeal from a representative's decision dated December 10, 2014, reference 03, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on January 21, 2015. Claimant participated. The employer participated by Ms. Tammy Mason, Human Resource Generalist.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Robert Watts was employed by APAC Customer Services, Inc. from March 11, 2014 until November 17, 2014 when he was suspended and subsequently discharged by the company. Mr. Watts was employed as a full-time customer service telephone representative and was paid by the hour.

Mr. Watts was discharged based upon the employer's belief that he had intentionally disconnected on a caller and because the employer believed the claimant had been "rude and short" on unspecified other calls that were reviewed by the company.

The disconnection of the caller took place when Mr. Watts accidentally triggered a "disconnect" button due to tremors in his hand from a previous motorcycle accident. Mr. Watts did not know how to re-connect the caller and, therefore, proceeded with the next call. The claimant had not been advised that he must make a report of disconnected calls onto a company log.

Mr. Watts denies being rude or being short with any callers. Mr. Watts was not aware of any dissatisfaction on the part of any callers, but believes that a caller who was satisfied at the time of the call later called in to complain for an unjustifiable reason.

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In discharge cases, the employer has the burden of proof to establish disqualifying conduct on the part of the claimant. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). 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. of Appeals 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's

power to produce more direct and satisfactory evidence than is actually produced it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

In the case at hand, the employer's witness was unfamiliar with many of the specifics related to the telephone calls that caused Mr. Watts' discharge from employment. The employer's witness testified that it was the employer's general belief that Mr. Watts had intentionally disconnected on a caller and that he had been rude and abrupt on other unspecified calls. In contrast, Mr. Watts testified with specificity explaining the accidental circumstances of the disconnect, his inability to re-connect with the caller and his unfamiliarity with how to proceed to report a dropped call. The claimant further testified with specificity about another call during which the caller seemed to be satisfied but later complained to the company.

The question before the administrative law judge in this case is not whether the employer has a right to discharge Mr. Watts for these reasons but whether the discharge disqualifies the claimant from the receipt of unemployment insurance benefits under the provisions of the Iowa Employment Security Law.

While the decision to terminate Mr. Watts may have been a sound decision from a management viewpoint, for the above-stated reasons, the administrative law judge concludes that the employer has not sustained its burden of proof of establishing intentional, disqualifying misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, provided that the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated December 10, 2014, reference 03, is affirmed. The claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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