

**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**

**BRENDA L CHRISTIANSON
6255 NE 88TH ST
ALTOONA IA 50009-9532**

**COMMUNICATIONS DATA SERVICE INC
ATTN HUMAN RESOURCES
PO BOX 671
DES MOINES IA 50303**

**Appeal Number: 06A-UI-05668-DT
OC: 05/07/06 R: 02
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Brenda L. Christianson (claimant) appealed a representative's May 24, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Communications Data Service, Inc. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on June 19, 2006. The claimant participated in the hearing. Linda Carter-Lewis appeared on the employer's behalf and presented testimony from one other witness, Toni Drayton. One other witness, Brandon Leek, was available on behalf of the employer but did not testify. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 3, 1984. She worked full-time as a records management clerk at the employer's subscription and product fulfillment business. Her last day of work was May 3, 2006. The employer suspended her on that date and discharged her on May 5, 2006. The stated reason for the discharge was mishandling of documents.

The claimant had been given a first and final warning on April 10, 2006 for mishandling documents due to the employer discovering a number of outdated items on the claimant's desk that had not been cleared, including about 13 going back to late February 2006 that had been on an ASAP status. The employer's standard was that if a clerk received a document request from another department marked as ASAP, that clerk was to immediately set all other work aside and handle the ASAP request so that it was resolved by the end of that day.

At approximately 12:30 p.m. on May 2, the claimant received a document request from an auditor in another department marked ASAP. However, the claimant was assisting a fellow employee with an ASAP request that employee was handling, so she did not immediately deal with the auditor's ASAP request to her. She completed assisting her co-worker at approximately 1:30 p.m. She then did some other work on her desk rather than the ASAP request, and then left at the end of her scheduled workday at 2:30 p.m. After leaving, she recalled the ASAP request she had left on her desk and contemplated calling a co-worker who was still working to ask her to take care of the request, but decided she would just wait and take care of the request when she came in the next morning.

However, when the auditor did not get a response to the request by late afternoon of May 3, the auditor directly contacted the claimant's supervisor, Ms. Drayton. Ms. Drayton then found the request on the claimant's desk and took care of getting the documents to the auditor.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

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.

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's failing to take care of the ASAP request before leaving on May 3, 2006, particularly after receiving a recent final warning for not properly taking care of document requests and after even failing to take action after recalling that she had left the request undone shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's May 24, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of May 3, 2006. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

ld/cs