

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARMAINE TINSLEY
Claimant

APPEAL NO. 12A-UI-01121-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES OF IOWA
Employer

OC: 12/11/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Charmaine Tinsley (claimant) appealed a representative's January 27, 2012 decision (reference 05) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with APAC Customer Services of Iowa (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 8, 2012. The claimant participated personally. Prior to her testimony, the claimant disconnected from the call. She did not call the administrative law judge to rejoin the hearing before the close of the record. The employer participated by Rochelle Jordan, Human Resources Generalist, and Angie Albright, Operations Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 10, 2011, as a full-time customer service representative for incoming calls. The claimant signed for receipt of the employer's handbook on October 10, 2010, when she was working as a temporary employee for the employer. The employer issued the claimant a written warning on April 25, 2011, for a customer complaint. The employer notified the claimant that further infractions could result in termination from employment. On November 16, 2011, the employer issued the claimant a written warning for attendance issues.

On December 5, 2011, the employer looked at a report that showed the claimant had a 20.5 percent rate of disconnecting customers on December 3 and 4, 2011. The client does not allow anything over 2 percent. The report showed that the claimant disconnected customers on 22 calls within 10 seconds of the call coming in to her. The employer wanted to talk to the claimant about the issue but the claimant reported she would not be at work on December 5, 2011. After management left for the day on December 5, 2011, the claimant arrived at work.

She worked from 6:43 to 10:13 p.m. to make up her work time. During that period she hung up on 6 more customers.

The claimant was ill and did not work on December 6, 2011. She was unscheduled on December 7, 8, 9, and 10, 2011. The employer suspended the claimant on December 11, 2011. On December 12, 2011, the employer terminated the claimant for hanging up on customers who were calling in for service.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions by disconnecting a large amount of customers. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's January 27, 2012 decision (reference 05) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css