

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NERMINA CERIC
Claimant

APPEAL NO. 09A-UI-09944-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEARS ROEBUCK & CO
Employer

**Original Claim: 05/17/09
Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Sears Roebuck & Company filed an appeal from a representative's decision dated July 1, 2009, reference 01, which held that no disqualification would be imposed regarding Nermina Ceric's separation from employment. After due notice was issued, a hearing was held by telephone on July 28, 2009. Ms. Ceric participated personally. The employer participated by Fred Hoffman, Sales/Service Manager; Melissa Forret, Recruiter; and Louis McCaslin and Theodore Harlan, Team Managers.

ISSUE:

At issue in this matter is whether Ms. Ceric was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Ceric was employed by Sears from January 28, 2007 until May 20, 2009 as a full-time customer service representative. Her job involved responding to in-bound calls regarding water heater placements. She was discharged for hanging up on customers.

In-bound calls are routed to the next available representative. The representative is alerted to the call by a ringing in the headset. In November of 2008, it was found that Ms. Ceric was hanging up on calls. The employer concludes that customers are being hung up on if its reporting system shows four or more calls during a period of approximately three seconds. It was determined that Ms. Ceric did not understand how to log off the system when she needed to be away from her phone and, therefore, was inadvertently hanging up on customers. She was coached on the proper procedure on November 21, 2008 and demonstrated that she understood the correct procedure. She confirmed during the hearing that she understood how to disconnect from the system when she needed to be away.

It was discovered on December 18 that Ms. Ceric was still hanging up on customers and she was again coached. When the conduct persisted, she was given a written warning on January 22, 2009. The warning was designated as a final warning. The decision to discharge was prompted by the fact that she was again hanging up on customers on May 14. As a result, she was discharged on May 20, 2009.

Ms. Ceric filed a claim for job insurance benefits effective May 17, 2009. She has received a total of \$2,444.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Ceric was discharged because she continued to hang up on customers in spite of warnings. The employer only administered discipline if there were four or more missed calls in rapid succession over the course of approximately three seconds. Ms. Ceric was coached two times before the employer administered formal disciplinary action. She demonstrated to the employer that she knew the correct procedure for logging off without hanging up on customers and acknowledged during the hearing that she knew the correct procedure.

The evidence of record does not establish any justification for Ms. Ceric's continued violation of the employer's standards after being warned that her actions were contrary to the employer's expectations. At least four customers were affected on each of the four occasions identified herein. Her actions would cause the customers to have to re-call in order to receive service. Poor customer service was clearly contrary to what the employer had the right to expect. Even if Ms. Ceric did not intentionally fail to use the correct log-off procedure, her negligence in not doing so was sufficiently recurrent as to manifest a substantial disregard for the employer's standards. She was coached or warned in November, December, and January, but the problem was still present in May. For the reasons cited herein, it is concluded that disqualifying misconduct has been established and benefits are denied.

Ms. Ceric has received benefits since filing her claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated July 1, 2009, reference 01, is hereby reversed. Ms. Ceric was discharged by Sears for misconduct in connection with her employment. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Ceric will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw