

**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**

**JOANNE M DILL
1522 WAKONDA DR
WATERLOO IA 50703**

**APAC CUSTOMER SVCS OF IOWA LLC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166 0283**

**Appeal Number: 05A-UI-01159-DWT
OC: 12/26/04 R: 03
Claimant: Respondent (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:

APAC Customer Service of Iowa LLC (employer) appealed a representative's January 18, 2005 decision (reference 01) that concluded Joanne M. Dill (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 17, 2005. The claimant participated in the hearing. Jim Greenlee, the human resource manager for the Waterloo facility, appeared on the employer's behalf. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 30, 1999. She worked as a full-time customer service representative. Prior to November 28, 2004, the claimant's job was not in jeopardy.

On December 13, 2004, the employer gave the claimant her first and final written warning for failing to follow the employer's client's procedures. After a customer complained that three representatives failed to give her the assistance she requested, the employer determined the claimant was one of these representatives. On November 28, 2004, the claimant was working in the Safe Harbor skill. The claimant did not know what to do with a call she received and asked how she should handle this customer. The claimant was told that she could not help the customer and was told to give the customer the phone number for customer service. The customer wanted to change Internet providers and did not want a representative to pressure her into keeping her present provider. When the customer called the number the claimant gave her, that representative pressured the customer to keep her current Internet provider. The employer concluded that if the claimant had accessed the customer's records, she could have changed the customer's Internet provider and satisfied the customer. The employer gave the claimant the first and final warning on December 13 because the employer required her to access the customer's records before the claimant gave any information or suggestions to the customer. Before a representative can access any customer's record, the customer must give the representative express permission to do this.

On December 14, 2004, the employer concluded the claimant again did not access a customer's record because she sold the customer products that the customer was already receiving. The claimant acknowledged she may have made one mistake in a week, but on December 21, the employer told her she had done this three times in one week and the claimant did not believe she had done this. The claimant had nothing to gain if she did this. The employer did not show her what information they considered when they came to this conclusion. The employer discharged the claimant on December 21, 2004 because the employer concluded the claimant repeatedly failed to follow the employer's procedures.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence

or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant. Based on the employer's investigation and conclusion, the claimant did not follow the employer's client's procedures and at least one customer had been so upset the customer registered a complaint. The evidence does not show that the claimant intentionally failed to follow the employer's procedures. On November 28, 2004, the claimant was in a new department or skill and asked how she should handle a certain customer. The claimant's testimony is credible and must be given more weight than the employer's reliance on reports from witnesses who did not testify. A preponderance of the evidence establishes the claimant did not intentionally fail to follow the proper procedures on November 28. Instead, when she did not know what to do, she asked for assistance and followed that the advice she received. Although the employer asserted on December 14 the claimant again failed to access a customer's account, the claimant disputed this assertion. Without establishing that the claimant failed to ask the customer if she could access the account, the evidence does not show that the claimant intentionally failed to follow the employer's procedures. At most the claimant may have made some errors but the facts do not show she was so careless or negligent that her errors amount to an intentional disregard of the employer's interests. Since the evidence does not establish that the claimant committed work-connected misconduct, she is qualified to receive unemployment insurance benefits as of December 26, 2004.

DECISION:

The representative's January 18, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of December 26, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/tjc