IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

NIESHA N TODD
Claimant

APPEAL NO: 12A-UI-08345-ST

ADMINISTRATIVE LAW JUDGE DECISION

ROSS HOLDINGS LLC
Employer

OC: 06/10/11
Claimant: Respondent (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The employer appealed a department decision dated July 9, 2012, reference 02, that held the claimant was not discharged for misconduct on June 14, 2012, and which allowed benefits. A telephone hearing was held on August 6, 2012. The claimant participated. Shannon Schmidt, operations manager, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment on December 28, 2011, and last worked for the employer as a full-time TSR on June 14, 2012. She received the employer's policies in an employee handbook. She also received a special instruction about the do-not-call policy and law.

The employer issued claimant a final written warning on May 2, 2012 for hanging up on a customer call. She was advised a further incident could lead to employment termination. The employer terminated claimant on June 14 based on a customer complaint. Claimant acted rude in dealing with the customer's request to be placed on the do-not-call list and effected a procedure to keep her in the system with a second call back.

Claimant failed to respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes the employer has established claimant was discharged for misconduct in connection with employment on June 14, 2012 for repeated violation of policy.

Claimant was on a final warning due to a policy violation, so her repeated policy violation offense constitutes job-disqualifying misconduct.

DECISION:

The department decision dated July 9, 2012 reference 02 is reversed. The claimant was discharged for misconduct on June 14, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw