

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LOGAN L VO**  
Claimant

**APPEAL NO. 10A-UI-11618-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DM SERVICES INC**  
Employer

**OC: 07/18/10**  
**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Logan Vo, filed an appeal from a decision dated August 12, 2010, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on October 5, 2010. The claimant participated on his own behalf and was represented by Kurt Winter. The employer, DM Services, participated by Human Resources Administrator Dana Fritsche.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Logan Vo was employed by DM Services from November 3, 2008 until July 21, 2010 as a full-time collector/analyst. On September 30, 2009, he received a written warning for violation of company policy pertaining to “contemptuous or disrespectful” language on the call floor. The warning advised him any further incidents could lead to disciplinary action up to and including discharge. The policy was reviewed with him at that time. The employer enforces this policy rigidly because staff members work in close quarters. Any comments made on the call floor could be overheard by customers on the phone with another employees.

On July 7, 2010, the claimant’s calls were being monitored and he violated the policy twice. One time he said, “oh my freaking God, that was ridiculous.” Another time he said, “son of a bleeping bleep, that’s great.” The customers had hung up on his line but his comments could have been overheard by customers on the phone with other staff members.

The violation was referred to Assistant Supervisor Terry Clark that same day. Normally she would then have taken the matter to Assistant Manager Sherri Law but that person was out of the office on personal business for a week. The matter went no further until approximately July 19, 2010, when Human Resources Manager Dana Fritsche and Operations Manager Dawn White discussed it. The two of them could have acted on the claimant’s separation even without

Ms. Law but did not do so. The claimant was not advised in advance of the violation or that further disciplinary action was pending.

The claimant was discharged by Supervisor Marcia Schmitt on July 21, 2010, for violation of the company policy.

### **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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The claimant had been advised his job was in jeopardy as a result of his violation of the company policy regarding language on the call floor. There is no dispute the claimant violated the policy on July 7, 2010, when he made the inappropriate comments. Whether the customer was off the line on his call is irrelevant as his comments could have been overheard by other customers on other calls. He is guilty of misconduct.

But the employer elected, for whatever reason, to postpone discharging the claimant for two weeks. The decision could have been made, and the claimant discharged, by managers other than Ms. Law, and no good reason for the delay has been given. Under the provisions of the above Administrative Code section, in order to be disqualified, the claimant must be discharged for a current, final act of misconduct. The administrative law judge considers a delay of two weeks to put this act beyond the definition of "current" especially when the violation was discovered the same day it occurred. For that reason only disqualification may not be imposed.

**DECISION:**

The representative's decision of August 12, 2010, reference 01, is reversed. Logan Vo is qualified for benefits, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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