

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

JENNIFER E MCCARROLL
209 SW LINDEN APT #8
ANKENY IA 50021

IA TELECOMMUNICATIONS SVCS INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-09737-DWT
OC: 08/08/04 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 are 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:

Iowa Telecommunications Services, Inc. (employer) appealed a representative's August 30, 2004 decision (reference 01) that concluded Jennifer E. McCarroll (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 October 15, 2004. The claimant participated in the hearing. Emily Beebout and Matt Brinkman 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 August 13, 2001. The claimant worked as a full-time business account manager. Brinkman had been her supervisor since mid-December 2003.

On May 12, 2004, the claimant received a written warning for failing to return phone calls, failing to work regular business hours and failing to submit timely reports. As a result of the written warning, the employer told the claimant she had to return phone calls the same day she received them and she must notify her supervisor when she was unable to work as scheduled. The employer placed the claimant on a performance improvement plan on July 1, 2004 because she was not making her quotas.

On August 2, the claimant knew she was scheduled to work in the call center. The claimant did not go to work on August 2 because she was ill and unable to work as scheduled. The claimant contacted the call center and reported she was unable to work because she was ill. On Tuesday, August 3, Brinkman called the claimant around 2:25 p.m. and left her a voicemail about some customer issues. The claimant understood the issues had already been resolved when Brinkman left the message. The claimant forgot to return Brinkman's August 3 call. They talked to one another on August 4 and the claimant indicated that she simply forgot to return his call. Based on the claimant's comments, Brinkman incorrectly assumed the claimant had worked at the call center on Monday, August 2. On August 5 or 6 Brinkman learned the claimant had not worked on August 2.

Since there had been previous problems, Brinkman had the claimant's company cell phone records pulled for August 2 and 3. The employer discovered a call had been placed on the employer's cell phone around 11:15 a.m., but it had been initiated from a Des Moines tower. The employer expected the claimant to work in her home territory to Ottumwa all day on Tuesday. The employer concluded the claimant was not in her assigned area on August 3. On August 11, the employer discharged the claimant for not being in the field on August 3 and for giving Brinkman false information.

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 discharged the claimant because the employer concluded the claimant was not working her assigned territory, Ottumwa, during business hours on August 3. The employer made this conclusion based on the one Des Moines tower at 11:15 a.m. call. The employer did not believe it was possible for the cell phone to roam as much as the claimant reported. While the employer's conclusion may be justified, the evidence does not support the employer's assertion. The employer presented unsubstantiated hearsay information to support the employer's conclusion it was not possible for the claimant's cell phone to roam as much as she reported.

The employer also concluded the claimant intentionally misled Brinkman to believe she had worked at the call center on August 2. Even though the claimant should have contacted Brinkman on Monday to let him know she was ill and unable to work, she contacted the person she was working for on Monday to report she was ill and unable to work. The claimant's failure to contact Brinkman on August 2 at most amounts to a good faith error in judgment. The facts do not establish the claimant intended to mislead Brinkman that she worked on August 2 when she had already called in sick that day.

Based on the employer's conclusions, the employer had business reasons for discharging the claimant. A preponderance of the evidence does not establish that the claimant did not work her assigned territory during business hours on August 3 or that she intentionally failed to let Brinkman know she had been ill and unable to work on August 2. The claimant did not commit work-connected misconduct. As of August 6, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's August 30, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of August 8, 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/kjf