

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LADDIE I JONES
Claimant

APPEAL NO. 09A-UI-19424-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARKETLINK INC
Employer

**Original Claim: 11/08/09
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Laddie Jones (claimant) appealed a representative's December 22, 2009 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Marketlink (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 5, 2010. The claimant participated personally. The employer participated by Angela Housh, Office Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on October 14, 2008, as a full-time telephone sales representative. The claimant signed for receipt of the employer's handbook on October 14, 2008. The claimant always speaks in a loud voice and it runs in his family. He has a physical reaction to the smell of fingernail polish that causes him to sweat and shake. He feels woozie and dizzy. The employer has a rule prohibiting painting your nails while working.

On July 17, August 5 and October 30, 2009, the employer issued the claimant written warnings for unprofessional behavior. The claimant asked a co-worker who was painting her nails to stop. He used his normal speaking voice, which is loud. The employer notified the claimant that further infractions could result in termination from employment.

On November 10, 2009, the supervisor yelled 20 feet across the room to the claimant to send his sale on to another department. The claimant yelled back that he could not, because he was in the middle of the conversation. The employer terminated the claimant on November 10, 2009, for yelling.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The claimant's warnings show a history of the employer's failure to make a safe work place for the claimant's specific medical condition. The employer terminated the claimant for responding in kind to the supervisor. The supervisor yelled 20 feet to the claimant. The claimant yelled 20 feet back to the supervisor. The employer did not provide any evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's December 22, 2009 decision (reference 01) is reversed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw