

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

TODD A KRAUTH
107 SPRUCE ST
MASSENA IA 50853-1044

SITEL CORPORATION
c/o JON-JAY ASSOCIATES INC
PO BOX 182523
COLUMBUS OH 43218-2523

Appeal Number: 06A-UI-03611-JTT
OC: 03/05/06 R: 01
Claimant: Respondent (2)

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 for Misconduct

STATEMENT OF THE CASE:

Sitel Corporation filed a timely appeal from the March 22, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 18, 2006. Claimant Todd Krauth did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Facility Manager Kevin Ferguson represented the employer. Exhibits One through Seven were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Todd Krauth was employed by Sitel Corp. as a full-time licensed insurance sales agent from November 22, 2004 until February 28, 2006, when Contact Center Manager Kevin Ferguson discharged him. Mr. Krauth's duties involved telephone insurance sales.

The final incident that prompted the discharge occurred on February 24, 2006, and concerned a telephone call that Mr. Krauth made to a prospective customer. The employer's computer system recorded the telephone call. The customer was initially on the line and can be heard in the recorded call responding to Mr. Krauth's questions. The customer soon hung up. For more than a minute, Mr. Krauth continued to conduct a conversation as if the customer were responding to his questions. Mr. Krauth then documented the interaction with the customer as a completed sale. Had the employer's verification department not listened to the recorded call, the information by Mr. Krauth would have resulted in the customer being billed for an insurance policy.

In addition to recording the call, the employer's computer system documents and codes the beginning time of a phone call, the moment a customer hangs up, and the moment the agent hangs up. The computer documentation for the call in question confirmed that Mr. Krauth hung up his phone more than a minute after the prospective customer had disconnected from the call.

Mr. Krauth would have been aware that the customer had hung up at the time the customer disconnected from the call. As soon as the employer's computer system detects that a customer has hung up, the agent's computer screen alerts the agent by momentarily showing a yellow banner and then displaying a red banner.

The verification department reported the problem transaction to Contact Center Manager Kevin Ferguson. Mr. Ferguson discharged Mr. Krauth in connection with this incident and in light of prior similar incidents. On January 31 and February 2, Mr. Krauth had documented completed sales in the absence of recorded telephone sales transactions.

Mr. Krauth established a claim for benefits that was effective March 5, 2006, and has received benefits totaling \$511.00.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Krauth was discharged for misconduct in connection with the employment. It does.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8).

The evidence in the record establishes that Mr. Krauth acted with willful and wanton disregard of the employer's interests when, on February 24, 2006, he perpetrated a fraud upon the employer. Mr. Krauth intentionally attempted to deceive the employer by making it appear as if he had made a bonafide sale when he knew he had not. The February 24, 2006 recorded telephone call was played into the record during the hearing. Mr. Krauth previously engaged in questionable behavior in connection with reporting sales where no recorded telephone sales transactions existed.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Krauth was discharged for misconduct. Accordingly, Mr. Krauth is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Krauth.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The \$511.00 in benefits Mr. Krauth has received constitutes an overpayment. Mr. Krauth must repay that amount.

DECISION:

The Agency representative's decision dated March 22, 2006, reference 01, is reversed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account will not be charged.

jt/kkf