

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERRY HWANG

Claimant

APPEAL NO: 09A-UI-11854-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIRST ADVANTAGE

MEMBERSHIP SERVICES INC

Employer

Original Claim: 06-21-09

Claimant: Appellant (1)

Section 96.5-2-a –Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 7, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 15, 2009. The claimant participated in the hearing. Chad Bennett, Human Resources Director, and Michelle Basile, Call Center Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time customer service/retention representative for First Advantage Membership Services from December 10, 2007 through June 25, 2009. The employer has a progressive disciplinary policy that provides a coaching, a verbal warning, a written warning, a final written warning, and then termination. The claimant received a verbal warning March 13, 2009, and was coached March 18, March 30, and April 9, 2009. The warnings were for a combination of poor customer services and placing calls on hold. The employer issued the claimant a written warning May 29, 2009, for being rude to a customer on May 27, 2009. The claimant asked an elderly female customer if she was hard of hearing. The customer asked him what he said and he repeated the rude question. A final written warning was issued to the claimant June 18, 2009, for poor quality scores and for putting a call on hold and then transferring it to the queue so another agent would have to take the call. On June 24, 2009, the claimant took the information from a customer, put the customer on hold and then transferred the call back to the queue. The final incident occurred June 25, 2009, when the claimant took a call and put the customer on hold after he took the information. The claimant never returned to the call and the customer was on hold for approximately three minutes before hanging up. The claimant was discharged June 25, 2009, per the employer's progressive disciplinary policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for job-related 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 followed its progressive disciplinary policy and the claimant knew or should have known that his job was in jeopardy after he received the final written warning; but, despite the warnings, the claimant's performance did not improve, even though he was aware of the policies and had demonstrated he was able to perform the job to the employer's expectations. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Therefore, benefits are denied.

DECISION:

The August 7, 2009, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw