

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS A HANSEN
Claimant

APPEAL NO: 12A-UI-10460-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CDS GLOBAL INC
Employer

OC: 07/15/12
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's August 20, 2012 determination (reference 02) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Jill Rasmussen and Rachel McDowell appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in January 2012. The claimant worked as a full-time customer service representative. During his employment, the claimant worked with magazines, products, tech support and iPads.

When the employer introduced the Intel-A-Sell program, the claimant accessed to this program when a customer called and indicated they wanted to cancel an order. The employer did not want the claimant to immediately go to the Intel-A-Sell program. Instead, the employer required employees to complete a customer order before offering an upgrade under the Intel-A-Sell program. The claimant received a written warning on May 23, 2012, for going immediately to the Intel-A-Sell program when a customer called to cancel an order. Even though the claimant received a written warning, he had no understanding his job was in jeopardy. Since the Intel-A-Sell program was a program to upgrade the customer's order, employees received 50 cents for every Intel-A-Sell sale completed.

On July 6, the claimant worked on various programs. When the employer monitored one of the claimant's calls on July 11, the employer learned the claimant offered an upgrade to a customer before he completed an order. When the employer talked to the claimant, the claimant acknowledged he had not followed the proper procedure with this customer. The employer discharged the claimant on July 16 for again improperly using the Intel-A-Sell program.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

On July 6, the claimant did not follow the proper procedure to upgrade a customer's order. When the employer talked to him about this on July 11, he admitted he failed to follow the correct procedure. The employer asserted that the claimant improperly upgraded a customer's order when the customer called to pay a bill. This resulted in a charge the customer had not authorized. The claimant denied he did anything a customer did not know about or authorize.

On July 6, the claimant worked on a number of programs. Even though the claimant had been warned about following the proper Intel-A-Sell policies in May, the July 6 incident was different than the issue the May 23 warning addressed. The claimant worked in a fast-paced work environment. On July 6, the claimant was careless or negligent when he went to the Intel-A-Sell program before he finished a customer's order, but this call-in addition to the May 23 warning does not rise to the level of work-connected misconduct. As of July 15, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's August 20, 2012 determination (reference 02) is reversed. The employer discharged the claimant for business reasons, but the evidence does not establish that the claimant committed work-connected misconduct. As of July 15, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw