

**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**

**ROXIE P KIPPER  
1012 – 31<sup>ST</sup> ST  
DES MOINES IA 50311**

**MARKETLINK INC  
ATTN CARLA PEARSON  
4305 FLEUR DR  
DES MOINES IA 50321**

**Appeal Number: 05A-UI-00709-H2  
OC: 08-15-04 R: 02  
Claimant: Appellant (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 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 11, 2005, reference 04, decision that denied benefits. After due notice was issued, a hearing was held in Des Moines, Iowa on February 15, 2005. The claimant did participate. The employer did participate through Carla Pearson, Human Resources Manager and Office Administrator and Howard Eaton, Call Center Director. Claimant's Exhibit A was received. Employer's Exhibit One was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a verifier full time beginning June 23, 2003 through December 17, 2004 when he was discharged. As a verifier the claimant was responsible for confirming sales

that other callers had made. On December 16, 2004, Mr. Eaton, the manager and Louise Bradley were standing in the office conversing before Mr. Eaton left for the day. Ms. Bradley noted that a call needed to be verified and told the claimant to verify the sale. When Ms. Bradley told the claimant to verify the sale, Mr. Eaton saw the claimant look directly at Ms. Bradley while she gave him instructions. The claimant was close enough to both Ms. Bradley and Mr. Eaton that he heard Ms. Bradley say his name and looked up at her while she spoke to him. After instructing the claimant to verify a sale, Ms. Bradley and Mr. Eaton continued their conversation. Mr. Eaton returned to his office after completing the conversation. Moments later Ms. Bradley entered his office and told him that the claimant had failed to verify the sale she had assigned to him, but had instead logged off his computer and gone to lunch. The claimant had been previously disciplined for insubordination for failing to follow instructions. Since the claimant had been previously disciplined for similar conduct and behavior, Mr. Eaton discharged him for failure to follow Ms. Bradley's instructions.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to 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.

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 claimant alleges that he never heard Ms. Bradley tell him to verify the sale. His testimony is not as credible as that of Mr. Eaton who was present when Ms. Bradley issued the instruction to the claimant and observed the claimant look directly at Ms. Bradley while she issued the instruction. Part of the claimant's regular job duties was to verify calls. The administrative law judge finds Mr. Eaton's testimony more credible than that of the claimant.

The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. Endicott v. IDJS, 367 N.W.2d 300 (Iowa App. 1985). The claimant heard Ms. Bradley instruct him to verify the call, but wanted to go to lunch instead so he did not verify the call. The instruction from Ms. Bradley was reasonable and the claimant's actions constitute misconduct sufficient to disqualify him from receiving unemployment insurance benefits. Benefits are denied.

DECISION:

The January 11, 2005, reference 04, 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.

tkh/pjs