

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA A DONATH
Claimant

APPEAL NO. 12A-UI-08948-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOCUS SERVICES LLC
Employer

OC: 06-17-12
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 16, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 20, 2012. The claimant did participate. The employer did participate through Catherine Roussow, Recruiter.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as an agent part time beginning September 13, 2004 through June 19, 2012 when she was discharged. The employer routinely monitors calls taken and made by representatives like the claimant. On June 18 the claimant was given a final written warning due to her past failure to offer all products to customers she was speaking on the telephone to. The claimant did not have the authority to determine when she would or would not offer products to the customers. After her final written warning on June 18 the employer monitored one more of her calls on June 19 and again the claimant did not offer all of the products to the customer. The employer retains their customers only by committing that all products will at least be offered to all customers. In the past the claimant had demonstrated an ability to properly offer all products to all customers. The claimant was not allowed to decide on her own that the customer was too old or did not understand the offer.

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 § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant knew how to properly offer all products to all customers but did not do so. Claimant's repeated failure to accurately perform her job duties after having been warned is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job related misconduct. Benefits are denied.

DECISION:

The July 16, 2012 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css