

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA N COLLINS
Claimant

APPEAL NO. 07A-UI-04467-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARKETLINK INC
Employer

**OC: 04/08/07 R: 01
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Amanda N. Collins filed a timely appeal from an unemployment insurance decision dated April 26, 2007, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held May 17, 2007 with Ms. Collins participating. Office Manager Angela Housh participated for the employer, Marketlink, Inc. Exhibit One was admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Amanda N. Collins was employed by Marketlink, Inc. from August 21, 2006 until she was discharged April 11, 2007. She worked as a telesales representative. Between December 21, 2006 and April 4, 2007, Ms. Collins received eight formal warnings for failing to follow established procedures for telephone sales. Also on April 4 Ms. Collins and her supervisor signed off on an action plan. In the action plan Ms. Collins reaffirmed that she would use probing questions and rebuttals on every call. On April 6, 2007, however, her supervisor observed her failing to meet these requirements. She was suspended on April 6 and discharged when she returned from suspension on April 11, 2007.

Ms. Collins had received a copy of the company's policy on telephone sales techniques when she was hired.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her 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.

Ms. Collins acknowledged in her testimony that she did not always follow company policy but would discontinue a call without probing questions and rebuttals if she felt that the call was unlikely result in a sale. While isolated instances of poor judgment are not included within the definition of misconduct, it is clear from the evidence that Ms. Collins was not given discretion to discontinue calls without following the standard procedure. Repeated failure to follow instructions in the performance of duties is one form of misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). Benefits must be withheld.

DECISION:

The unemployment insurance decision dated April 26, 2007, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

css/css