

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHLOLAS J FINLEY
Claimant

APPEAL NO: 10A-UI-10082-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

INFINITY CONTACT INC
Employer

**OC: 06/13/10
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated July 8, 2010, reference 01, that held he was discharged for misconduct on June 16, 2010, and benefits are denied. A telephone hearing was held on August 26, 2010. The claimant participated. Jennie Wildman, HR Manager, and Ken Leffler, Supervisor, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on April 14, 2009, and last as a full-time telemarketer on June 16, 2010. On June 15, a telemarketer seated near the claimant requested assistance when a disgruntled customer requested to be placed on the do not call list. The claimant got on the line, followed the employer script regarding the customer being placed on the do not call list, and disconnected.

Supervisor Leffler received a report that claimant hung-up on a customer and he listened to the recording. He concluded that claimant had violated the employer code of conduct policy by being discourteous to the customer when he hung up.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on June 16, 2010, for a violation of company policy.

The claimant hung-up on a customer after explaining that the person had been placed on the do not call list. While the employer decision to discharge may be warranted by a violation of its policy, the one-time incident is not so serious as to constitute job disqualifying misconduct. This is a customer that the employer will never call again or do business. The claimant was brought into the call by another employee and he tried to handle the matter according to the script. His ending the call after satisfying the customer request, though in an abrupt manner, is not disqualifying misconduct.

DECISION:

The department decision dated July 8, 2010, reference 01, is reversed. The claimant was not discharged for misconduct on June 16, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs