

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

ANDRIA M KING
805 GRAND AVE
DAVENPORT IA 52803-5652

GLOBAL LINK INC
GLOBAL LINK TELESERVICES
777 N FIRST ST STE 430
SAN JOSE CA 95112

Appeal Number: 05A-UI-02677-DT
OC: 02/06/05 R: 04
Claimant: Appellant (2)

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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.7-2-a(2) – Charges Against Employer's Account

STATEMENT OF THE CASE:

Andria M. King (claimant) appealed a representative's March 7, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Global Link, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 6, 2005. The claimant participated in the hearing and presented testimony from one other witness, James Bell. Sandra Peterson appeared on the employer's behalf and presented testimony from one other witness, Patrick Mason. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 9, 2004. She was hired to work full time as a telemarketer and team leader in the employer's Davenport, Iowa call center. Her last day of work was February 10, 2005. The employer discharged her on February 11, 2005. The reason asserted for the discharge was insubordination.

Mr. Mason began working for the employer on or about February 7, 2005 as a shift manager. On February 8, 2005, the claimant, another telemarketer, and Mr. Mason were involved in a telephone conference call with the business' president and owner, Ms. Paterson. Part of the meeting dealt with the claimant's concern that she was not getting enough hours; she was only getting approximately 20 – 30 hours per week, rather than full time hours. Other topics discussed in the meeting dealt with what accounts the claimant and the other telemarketer had worked on in the past, and what programs they would work on in the future. Ms. Peterson indicated that the claimant should now be reporting to Mr. Mason. The claimant asked for clarification on that point, and attempted to explain that she had never worked on the one program the employer believed she had worked. The claimant acknowledges that during the conference call there may have been times she did inadvertently interrupt Ms. Peterson, but asserted that this was a side affect of the conference call being on a speaker phone cutting in and out where she was not aware that Ms. Peterson was not done speaking when she started to speak.

After the conference call concluded, Mr. Mason and Ms. Peterson had a private call in which Mr. Mason voiced his opinion that the claimant had been very disrespectful during the meeting; Ms. Peterson agreed. Mr. Mason then verbally warned the claimant that challenging his authority would not be tolerated.

The claimant had been working on an idea to set up an Excel ® spreadsheet to assist the telemarketers in efficient scheduling of their calls. She attempted to explain the idea to Mr. Mason, who was not very receptive to the idea, but indicated that if the claimant knew how to do it and wanted to do it, she could do it. The claimant went home after work on February 10, 2005 and considered starting working on the project. However, she began to wonder if as the shift manager, it might not be more appropriate for Mr. Mason to do the project, and speculated that his reluctance might have been due to a lack of knowledge of the Excel ® program. She decided to call and further discuss the matter with Mr. Mason, and to offer to show him how to work the program if he did not know. After getting him on the line, she started to explain her position and offer, but he cut her off, asking if she was challenging his authority. The claimant denied that she was challenging his authority, and the call ended. The next day she was discharged for insubordination.

The claimant established an unemployment insurance benefit year effective February 6, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa

App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate questions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

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 focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or

- b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is insubordination. However, the employer has misinterpreted the claimant's statements and actions, either intentionally or unintentionally. Under the circumstances of this case, the claimant's unsuccessful attempts to communicate her actual intentions was, on her part, at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code section 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code section 96.19-3. The claimant's base period began October 1, 2003 and ended September 30, 2004. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

DECISION:

The representative's March 7, 2005 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

ld/sc