

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN J GILLISPIE
Claimant

APPEAL NO. 12A-UI-02113-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARKETLINK INC
Employer

OC: 01/15/12
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the February 22, 2012 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on March 26, 2012. Claimant participated. Employer participated through Human Resources Manager Amy Potratz, Supervisor Roman Runyan, Call Center Manager Kelley Woods.

ISSUE:

Did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a telephone sales representative and was separated from employment on January 18, 2012. On January 14 a quality assurance reviewer listened to three phone calls and accused claimant of not answering three outbound phone calls on January 13. He was not interviewed about the reasons why or given examples of the calls. At that point, most of his calls were inbound. He had spoken to human resources that day because he was upset about his pay rate changes and not being paid for breaks because he had not yet been switched to outbound calls. On January 5, 2012, he had been warned about the same thing for calls on January 4 and was suspended for the paid time off he had already planned for the rest of that day. He was not allowed to hear those calls, either. He had been awarded the most valuable employee award within two weeks prior to the separation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984).

Since the employer did not provide claimant an opportunity to hear any of the calls that contributed to his warning or termination, and he credibly denied having refused or ignored outgoing phone calls since he was assigned to incoming calls, the employer has not met its burden of proof to establish misconduct. Benefits are allowed.

DECISION:

The February 22, 2012 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw