

**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**

**MELISSA M FEIGE
121 – 2ND ST APT 8
SOLDIER IA 51572**

**IKAN MARKETING INC
1269 – 30TH RD
AXTELL KS 66403**

**Appeal Number: 04A-UI-08185-HT
OC: 06/20/04 R: 01
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant, Melissa Feige, filed an appeal from a decision dated July 19, 2004, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 19, 2004. The claimant participated on her own behalf. The employer, Ikan Marketing, Inc. (Ikan), participated by Co-Owner Judy Zimmerly. Exhibit A was admitted into the record.

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: Melissa Feige was employed by Ikan from October 7, 2002 until June 22, 2004. She was a full-time telephone sales representative.

Ikan had recently obtained a contract from Planned Parenthood which would result in 20,000 hours of work for the company. The calls were to be a follow-up regarding brochures which had been mailed to the leads. The claimant indicated she was unwilling to call on behalf of Planned Parenthood due to her personal feelings regarding abortion. She was willing to make the calls as long as she could modify the script but the client had indicated no deviations from the script would be allowed. When she notified Co-Owner Judy Zimmerly on June 21, 2004 of her decision not to call on this program, she was asked if she was quitting. She said no. The employer told her to think about it over night. The next day she notified the employer she was still unwilling to work on this program and was discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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 claimant refused to call on a program for a client of the employer. This was due to her personal convictions on the issues advocated by this client. She was not being asked to join Planned Parenthood or to renounce her personal convictions, only make the calls to leads on the call list. Her decision to refuse the work, while based on valid personal beliefs, still constitutes a refusal to do the work as assigned. This is insubordination and the claimant is disqualified.

DECISION:

The representative's decision of July 19, 2004, reference 01, is affirmed. Melissa Feige is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

bgh/tjc