

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAMAYE M STEWARD
Claimant

APPEAL NO. 12A-UI-04789-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARKETLINK INC
Employer

OC: 04/01/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Marketlink, Inc. filed a timely appeal from a representative's decision dated April 25, 2012, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on May 21, 2012. The claimant participated. The employer participated by Ms. Heidi Hatten, human resource representative, and Mr. Roman Runyon, supervisor.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Kamaye Steward was employed by Marketlink, Inc. from November 15, 2010, until April 6, 2012, when she was discharged from employment. Ms. Steward worked as a full-time telephone sales representative and was paid by the hour. Her immediate supervisor was Roman Runyon.

The claimant was discharged on April 6, 2012, when the employer stated that the claimant had not made a timely disposition of a telephone sales call on April 4, 2012. Employees are expected to complete phone calls, make computer entries, and to make themselves available for the next call, allowing no significant amount of time that they are unavailable for the next call. Ms. Steward had been warned in the past about the timely disposition of her calls.

At the time of discharge, and hearing, Ms. Steward denied making an untimely disposition of any calls since her previous warning. The claimant requested that the call be played back in her presence prior to discharge, however, the employer refused and the claimant was discharged. It is the claimant's belief that her employment ended because the company was downsizing due to business conditions at the time.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is not.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992). Conduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

In this matter, the claimant was discharged based upon the employer's belief that she had not quickly enough made a disposition of a call that took place on April 4, 2012. The claimant denies the employer's allegation. At the time of discharge, the claimant requested that a

recording of the call be played in her presence and the request was denied. Ms. Steward testified that since her previous warning, she had made a concerted effort not to have an untimely disposition of calls and believes that her separation from employment was related to the general downsizing of the employer's operation due to business conditions.

The administrative law judge notes that although the employer was aware that the issue regarding the claimant's separation from employment was highly disputed, the employer did not submit any evidence in support of its conclusion that the call in question was not disposed of in a timely manner. The disposition of calls, at times, is delayed through technical issues and other good-cause reasons. The administrative law judge finds the claimant to be a credible witness and finds that her testimony is not inherently improbable. As the evidence in the record is not sufficient to clearly establish disqualifying misconduct on the part of the claimant, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing disqualifying misconduct in connection with the claimant's employment. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated April 25, 2012, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw