

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES SKINNER

Claimant

APPEAL NO: 11A-UI-04336-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOCUS SERVICES LLC

Employer

OC: 02-06-11

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 29, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 29, 2011. The claimant participated in the hearing. Jessica Donath, Recruiting Assistant, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time agent for Focus Services from June 30, 2008 to February 7, 2011. On July 27, 2010, the claimant was caught “riding” or sitting on calls on four occasions. Agents are supposed to transfer the call, announce and introduce the caller to the next agent so it is not a “cold call,” and then disconnect so they can take additional calls. They are not allowed to listen in on the transferred call. As a result of the claimant’s actions he received a first and final written warning. On December 9, 2010, the claimant rode and cold called three separate calls and received a final written warning and five-day suspension in lieu of termination because he indicated he was under a great deal of stress. On February 7, 2011, he rode and cold called another call, which the employer discovered through routine monitoring, and his employment was terminated. The claimant admitted the July 27, 2010, incidents took place. He also indicated that on December 9, 2010, he was sitting on “ghost calls” where someone calls in but does not say anything or disconnects. Under the employer’s policy, agents are expected to stay on the line for one minute and then do their closure. The claimant stated it was okay to stay on a ghost call for “5 to 10 minutes” and that he stayed on for 10 to 15 minutes as a way to “take a little break from back to back calls.” With regard to the February 7, 2011, situation the claimant stated the agents were given permission to cold transfer calls to the billing department because of the high volume of calls for the billing department. He said he sat on the call monitored by the employer because the billing agent did not answer the first time he called. The employer testified that cold calling is allowed on very

rare occasions due to call volume and does not last for the entire shift but usually for approximately a two-hour period. A helper walks through the call floor and announces the agents can cold call and then walks through again to tell them when that time period is over. The employer does not have any documentation that cold calling was authorized February 7, 2011.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 claimant showed a pattern of cold calling and riding transferred calls during random audits which would indicate he was also doing it when he was not being monitored. He admitted doing so four times July 27, 2010, and agreed that he was riding ghost calls for 10 to 15 minutes December 9, 2010. He acknowledged cold calling and riding a transferred call February 7, 2011, but claims he had permission to do so from the helper on the floor who announced all agents could cold call due to the high call volume. If that statement is correct, however, it is unlikely the employer would have terminated the claimant's employment for cold calling other agents if he was so authorized. He did not have permission to ride the transferred calls and was required to forewarn his coach if he had to ride a call for some reason but he failed to do so on that date. Consequently, the administrative law judge concludes the claimant's conduct

demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The March 29, 2011, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css