

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRENT A JOHNSON
Claimant

APPEAL NO. 10A-UI-08419-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRINCIPAL LIFE INSURANCE CO
Employer

OC: 04/25/10
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Principal Life Insurance Company filed a timely appeal from a representative's decision dated June 3, 2010, reference 02, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on July 29, 2010. The claimant participated personally. The employer participated by Ms. Kim Post, manager client contact department, and Mr. Greg Smith, department 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 all the evidence in the record, the administrative law judge finds: Trent Johnson was employed by Principal Life Insurance Company from February 20, 2006, until April 28, 2010, when he was discharged from employment. Mr. Johnson last held the position of full-time individual investor specialist and was paid by salary. His immediate supervisor was Wendy Brandt.

Mr. Johnson was discharged following an audit of his inbound telephone calls for the period of March 1, 2010, through April 27, 2010. During the audit, it was discovered that Mr. Johnson was not disconnecting from calls after the inbound caller had left the line, but instead was allowing the line to remain open for extended periods of time, ranging from 10 minutes to 83 minutes. The claimant's failure to disconnect on his end of the telephone conversation caused Mr. Johnson's line to appear to be busy with a business call. By keeping the line open, Mr. Johnson would appear to be busy, thus improving his statistical averages. The act, however, prevented other inbound calls from being received by the claimant for extended periods of time.

Employees receive eight to ten weeks of training on call usage and are aware of the proper procedures. Supervisory personnel are available to handle technical difficulties if they are reported. Mr. Johnson, in the past, had reported some problems with headsets but had not reported that his phone would not accept calls for extended periods of time.

In a meeting held prior to the claimant's discharge on April 28, 2010, the results of the audit were presented to Mr. Johnson. The claimant at that time did not indicate that the extensive periods of time where his telephone line was kept open were caused by technical difficulties. The claimant instead admitted violating company policy and was discharged from employment.

It is the claimant's position that he did not intentionally avoid calls and that the extended periods of time when his phone was not available to take calls was caused by technical difficulties and that he was unaware, at times, that his phone was not available for the next inbound call.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment benefits. It does.

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 evidence in the record establishes that individuals in Mr. Johnson's job classification are provided extensive training and are aware of their obligation to complete calls and open their lines for the next inbound call as soon as practicable. Displays on each phone tell the employee if the phone is available for the next call. Mr. Johnson did not report in the past that his system was unavailable for calls. The claimant was aware that call avoidance was a violation of an important company policy and could result in his termination from employment.

Although given an opportunity prior to his discharge to explain any extenuating circumstances, Mr. Johnson did not do so. Instead, he admitted fault in the matter and was discharged.

For the above-stated reasons and upon application of the law, the administrative law judge concludes that the employer has sustained its burden of proof in establishing disqualifying misconduct.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The issue of whether the claimant must repay unemployment insurance benefits he has received is remanded to the Unemployment Insurance Services Division for a determination.

DECISION:

The representative's decision dated June 3, 2010, reference 02, is reversed. The claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits he has received is remanded to the Unemployment Insurance Services Division for a determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw