

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on January 6, 2005, as a part-time telephone sales representative. For approximately six months the claimant trained other employees. She was aware of the rules. The claimant understood she was to use her judgment to disposition questionable calls.

As part of her job, the claimant spoke to customers who had credit cards from the employer's client. The claimant was supposed to encourage customers to purchase insurance. The employer issued the claimant written warnings for failing to properly disposition telephone calls. The claimant admitted to making mistakes in those two instances.

On August 12, 2005, the claimant understood a customer to say the customer had paid her balance and wished to close her account. The claimant dispositioned the call as the customer no longer having an account. The claimant's disposition of the call would cause the client to research the account. The employer was monitoring calls and listened to the recording of the call. The employer understood the customer to say she was planning on paying her balance and would be closing her account. The employer felt the claimant should have coded the account as a refusal of insurance. On August 12, 2005, the employer terminated the claimant for improperly dispositioning a call. The claimant maintained she had used the proper disposition code even after listening to the recording of the call.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes she was 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.

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 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 employer discharged the claimant and has the burden of proof to show misconduct. The employer did not provide sufficient evidence of misconduct at the hearing. Even though the customer never refused the insurance, the employer wanted the refusal disposition code entered into the computer for the case. The employer did not supply sufficient evidence to prove the claimant had been trained in this particular situation to place the refusal code into the computer. No exhibits were offered showing training materials. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's August 31, 2005 decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

bas/kjw