

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY A THOMAS
Claimant

APPEAL NO. 13A-UI-07916-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOCUS SERVICES LLC
Employer

OC: 06/09/13
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Anthony Thomas, filed an appeal from a decision dated June 28, 2013, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on August 13, 2013. The claimant participated on his own behalf. The employer, Focus Services, participated by Recruiter Courtnee Sowders

ISSUE:

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

FINDINGS OF FACT:

Anthony Thomas was employed by Focus Services from March 28, 2012 until June 14, 2013 as a full-time sales agent for the client Century Link. The sales agents know they are not to make any changes to an account unless the request comes from a person authorized to make such changes. If the person requesting the changes is not the primary account holder, their name must be added by the account holder. Making changes to an account requested by persons not authorized by the account holder to do so, is grounds for discharge.

On February 9, 2013, a call came in to close an account and Mr. Thomas closed it. The account holder contacted Century Link on some unknown date after that, complaining the account had been closed by a person not authorized to request changes. An investigation was done by persons unknown over an unknown period of time and the decision came down from the corporate office to discharge the claimant.

Mr. Thomas maintains the person calling to cancel the account was authorized at the time the changes were made and provided all the required information about the account before he closed it. He asserted this person's name could have been removed from the list of authorized persons after the initial call but before the complaint was made. The employer asserted the computer system showed no changes in the list of authorized persons, neither added nor deleted.

The claimant was discharged for violation of the policy prohibiting changes to accounts requested by unauthorized persons.

REASONING AND CONCLUSIONS OF LAW:

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 main dispute in the testimony of the witnesses is whether the person who called on February 9, 2013, was authorized to make such changes. The employer asserts she did not and the claimant maintained she did. Mr. Thomas asserted that person's name was likely removed from the system as an authorized individual after the account holder learned of the penalty fee assessed for early termination of the contract. The employer maintained the name could not have been removed without leaving an electronic record of the removal, but the claimant asserted it was possible no trace was left.

The administrative law judge does not find the employer's testimony to be any more or less credible than the employer's. Both made good argument but without any supporting documentation for the appeal hearing. But the employer has the burden of proof to establish substantial, job-related misconduct and the judge cannot find that it did. Without firsthand testimony or more information on the nature, date and investigation of the complaint, it could not successfully rebut the claimant's denial. Disqualification may not be imposed.

DECISION:

The representative's decision of June 28, 2013, reference 01, is reversed. Anthony Thomas is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs