

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER G CHRISTENSEN
Claimant

APPEAL NO: 14A-UI-13268-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOCUS SERVICES LLC
Employer

**OC: 11/23/14
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.3(7) – Overpayment of Benefits

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's December 17, 2014 (reference 01) determination that held the claimant qualified to receive benefits and the employer's account subject to charge because he had been discharged for non-disqualifying reasons. The claimant did not respond to the hearing notice or participate at the January 21 hearing. Renee Dean and Kelly Martin appeared on the employer's behalf. Based on the evidence, the administrative record, the employer's arguments, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits and has been overpaid benefits.

ISSUES:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

Has the claimant been overpaid any benefits?

Is the claimant required to pay back any overpayment of benefits or will the employer's account be charged for any overpayment?

FINDINGS OF FACT:

The employer rehired the claimant on March 6, 2014. The claimant worked part time as an agent in the employer's call center. The claimant's job required him to answer customer calls and sell direct television services. Part of the employer's policy requires their employees to provide customers with accurate pricing information about services the employer sells. Employees receive a pricing book and have access to on-line screens when talking to customers. Employees receive training about pricing and how to handle customer calls.

The employer's policy informs employees when disciplinary procedures are necessary the employer first teaches so an employee knows and understand policies. If issues continue, the employee receives a written warning, then a suspension, and then termination if issues continue. The employer had talked to the claimant several times about incorrect pricing information he gave to customers. On October 3 the employer gave the claimant a three-day

suspension for again failing to give customers the correct pricing information. After the claimant indicated in October that he was unsure about pricing because he had received different pricing information, Martin reminded him he had pricing book and could use screens on his computer that provided accurate information to give to a customer.

On November 25 quality assurance personnel heard the claimant again give inaccurate pricing information to a customer. The employer considered the claimant's repeated failure to give customers accurate information as a failure to comply with the employer's policy. The claimant's inaccurate information to customers could be considered as cramming and slamming. In November there was a bonus system based on an employee's sales. The employer suspected the claimant gave inaccurate information to get a bonus.

The employer discharged the claimant on November 25, 2014. The claimant established a claim for benefits during the week of November 23, 2014. He filed claims for the weeks ending November 29, 2014 through January 17, 2015. He received his maximum weekly benefit of \$124 each week with the exception of the week ending November 29, 2014. This week he received a gross benefit payment of \$111. The administrative record indicates the employer participated at the fact-finding interview and satisfied the participation law.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a.

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

After the claimant received a three-day suspension for failing to provide correct pricing information to customers, he knew or should have known his job was in jeopardy. The claimant had the necessary tools available to him to give customers correct pricing information. Since the claimant did not participate at the hearing it is not known why he continued to give inaccurate pricing information to customers. But his repeated failure to provide accurate pricing information when all he had to do was to look at screen on his computer, the evidence suggests that he intentionally failed to give customers accurate information so he would make a sale. The claimant violated the employer's policy and committed work-connected misconduct. As of November 23, 2014 the claimant is not qualified to receive benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3(7). Based on this decision, the claimant is not legally entitled to receive benefits as of November 23, 2014. He has been overpaid \$979 in benefits he received for the weeks ending November 29, 2014 through January 17, 2015.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)a, b. Since the employer participated at the fact-finding interview, the claimant is responsible for paying back the overpayment of benefits.

DECISION:

The representative's December 17, 2014 (reference 01) determination is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. As of November 23, 2014 the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

The claimant has been overpaid \$979 in benefits he received for the weeks ending November 29, 2014 through January 17, 2015. The claimant is required to pay back this overpayment.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/can