

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

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APAC CUSTOMER SERVICES INC  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-04805-DT  
OC: 03/28/04 R: 04  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

David Robinson (claimant) appealed a representative's April 15, 2004 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from APAC Customer Services, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 20, 2004. The claimant participated in the hearing. Cris Scheibe of TALX UC eXpress appeared on the employer's behalf and presented testimony from two witnesses, Angela Hansen and Turkesa Hill. This appeal was consolidated for hearing with one related Appeal 04A-UI-04804-DT. During the hearing, Employer's Exhibit One was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE: Was the claimant discharged for work-connected misconduct?

#### FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on September 13, 2002 in the employer's Dubuque, Iowa telemarketing call center. Effective March 3, 2003, at the claimant's request he was transferred to the employer's Davenport center, where he worked part-time (26 – 30 hours per week) as a telephone sales representative on a credit card company program. His last day of work was November 11, 2003. The employer suspended him with pay on that date, and discharged him effective December 3 by a letter he received December 16, 2003. The stated reason for the suspension and discharge was following improper procedures and engaging in fraudulent sales techniques.

The claimant had been given some prior warnings for failing to follow proper procedures, including a first and final warning issued on April 16, 2003 for an improper sales tactic. In the fall of 2003, the employer became concerned regarding the high percentage of the claimant's calls that reportedly resulted in sales of other services. On November 7, the employer requested that Ms. Hansen, the quality supervisor, perform an audit of the claimant's sales for October 6 through November 5. During that period, Ms. Hansen discovered that there were 15 calls for which the claimant had recorded the sale of a "credit protector" service to a customer. She listened to a recording of those calls, and found that only three were done correctly, with the claimant reading all of the information regarding the product verbatim from the approved script. On one, the claimant recorded a sale of the service, but there was no discussion of the service whatsoever in the call; the claimant asserted that he had pushed the button to indicate a sale of that service in error and had immediately informed his supervisor. On the remaining 11, however, the claimant read the first part of the script regarding offering to provide further information regarding the service, and then did some adlibbing, but in all cases left out any mention of the fee that would be charged against the customers' accounts for the service.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code Section 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code Section 96.5-2-a.

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 claimant's regular omission of the required information, especially since he indicated on at least three sales that he knew how to properly present the information, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

#### DECISION:

The representative's April 15, 2004 decision (reference 02) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of December 3, 2003. This disqualification continues until the claimant 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.

ld/kjf