

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JASMINE A COFFIN
Claimant

MARKETLINK INC
Employer

APPEAL NO. 14A-UI-10682-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/19/14
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 6, 2014, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 3, 2014. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Sheylene Houston participated in the hearing on behalf of the employer with a witness, Theresa Matthews. Exhibits One to Four were admitted into evidence at the hearing.

ISSUES:

Was the claimant discharged for work-connected misconduct?
Was the claimant overpaid unemployment insurance benefits?
Is the employer subject to charge for benefits paid?

FINDINGS OF FACT:

The claimant worked full time for the employer from September 4, 2012, to September 19, 2014, as a telephone sales representative. She was informed and understood that under the employer's work rules, intentionally avoiding calls was prohibited.

The claimant received a written warning on August 11, 2014, because during monitoring of her calls, it was discovered that she was waiting over three minutes after an answering machine picked up on a call on several calls on August 6, 7, and 8, which was considered call avoidance. She was informed that she was required to wait no more than 30 seconds before ending a call when the call was answered by an answering machine or voice mail.

The claimant's supervisor monitored her calls again from September 15 to 18 and discovered multiple instances where the claimant waited on the line on a call that had gone to voice mail or answering machine for over 30 seconds, including some of over a minute. The claimant was

not the only person monitored at that time, but she had an excessive number of calls picked up by voice mail or answering machine that she did not end promptly in comparison to other telephone sales representative. The claimant was intentionally avoiding calls. She was discharged for this on September 19, 2014.

The claimant filed for and received a total of \$1,627 in unemployment insurance benefits for the weeks between September 14 and November 1, 2014.

The employer participated in the fact-finding interview held on October 3, 2014, and presented information about the reasons for separation.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The preponderance of the evidence establishes that the claimant had been warned about excessively staying on the line after voice mail or an answering machine picked up. She was told that she was to end such a call within 30 seconds. Afterward, she continued to violate the employer's policy and the warning she had received. The claimant's violation of a known policy and warning was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law generally 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. But a claimant is not required 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.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$1,627 in benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer's account will not be charged for the overpaid benefits.

DECISION:

The unemployment insurance decision dated October 6, 2014, reference 02, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant was overpaid \$1,627 in benefits, which she is required to repay.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs