

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KYLE J HOFFMAN
Claimant

THOMAS L CARDELLA & ASSOCIATES INC
Employer

APPEAL 15A-UI-01899-H2T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/11/15
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 2, 2015 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 12, 2015. Claimant participated. Employer participated through Jeff Acker, Supervisor. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a sales representative beginning on March 17, 2014 through January 15, 2015 when he was discharged. The claimant was misrepresenting to customers the nature and cost to them of the services he was selling. The client of the employer called the employer to complain that their sales representatives were misrepresenting the program. The employer began an audit by listening to numerous employees, including the claimant. The call transcripts found in Employer's Exhibit One show clearly that the claimant was intentionally misleading customers to get them to purchase another line or service. The employer did not know that the claimant was misleading the customers until the audit was done in January 2015. The claimant and at least two other employees were discharged for misrepresenting to customers the cost of services. The claimant was treated in a manner similar to other employees. The employer acted within a reasonable time after learning of the claimant's misrepresentation to more than one customer. The employer's policy, a copy of which had been given to the claimant, clearly spells out that employees can be discharged for even one infraction of the rules. The claimant's actions could have cost the employer the client and resulting income from that client account.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). It is not unreasonable for the employer to expect the sales representative to be honest in their dealing with customers. The employer's records establish that the claimant was misrepresenting services and conditions of sales to customers. Such conduct is not in the employer's best interest as it could cost them the customer's business. The employer only found out about the claimant's dishonest behavior in January and took action immediately after learning what he was doing. The claimant was discharged for a current act of misconduct as the time begins to run when the employer learns of the act, not when the employee commits the act. Claimant's repeated misrepresentation of services to customers rises to the level of disqualifying job related misconduct. Benefits are denied.

DECISION:

The February 2, 2015 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

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