

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

CESAR A AGUILAR
1341 – 210TH ST
SCHALLER IA 51053-7552

MARKETLINK INC
c/o CARLA PEASON
4305 FLEUR DR
DES MOINES IA 50321

Appeal Number: 06A-UI-04968-DWT
OC: 03/05/06 R: 01
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Cesar A. Aguilar (claimant) appealed a representative's May 8, 2006 decision (reference 04) that concluded he was not qualified to receive unemployment insurance benefits and the account of Marketlink, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 25, 2006. The claimant participated in the hearing. Steve DeVos, the call center manager, appeared on the employer's behalf. 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:

Did the employer discharge the clamant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 31, 2005. The claimant worked as a full-time telephone sales representative. DeVos was the claimant's supervisor. When the claimant started working for the employer on August 31, 2005, the employer gave the claimant an employee handbook that explains the employer's policies. The employer's dress code informed employees that Monday through Thursday they could wear business casual clothes, but they could not wear flip flops or shorts. Also, the employer's attendance policy indicated that if an employee accumulated eight attendance occurrences they would receive a suspension. If the employee had another attendance occurrence or accumulated nine occurrences, the employer would discharge the employee. Even though the claimant received the handbook, he did not read it.

On April 11, 2006, the employer suspended the claimant because he had accumulated eight attendance occurrences. On April 18, DeVos talked to the claimant about his attendance because the claimant wanted some time off to visit his family out of state. DeVos explained that if the claimant received another attendance occurrence he would be discharged. DeVos made suggestions as to how the claimant could work extra hours before he left on a vacation and would not receive another attendance occurrence.

On April 19, 2006, the claimant reported to work for his 10:00 a.m. to 3:00 p.m. shift in shorts and flip flops. The claimant knew he could not wear flip flops to work, but wanted to see if management would allow him to work as other employees had been allowed to do when they reported to work wearing flip flops. Supervisors on duty told the claimant he would not be allowed to work because he violated the employer's dress code by wearing flip flops and shorts. The claimant told the managers on duty he would not return to work for his 5:00 to 8:00 p.m. shift.

The claimant had shoes and socks in his car, but he did not have any pants with him. When the claimant left work at 10:45 a.m., he went to a friend's home. The claimant did not drive back home to pick up a pair of pants because he did not have any money for gas and he did not ask anyone if he could borrow any money.

The claimant came back to work at 4:30 p.m. to talk to DeVos. The claimant still had on his flip flops and shorts. The claimant then told DeVos that the manager who sent him home that morning discriminated against him because other employees had been allowed to work when they violated the dress code but the claimant had been sent home. DeVos asked the claimant to make a written statement explaining how a manager had discriminated against him. DeVos also explained to the claimant that if he worked his 5:00 to 8:00 p.m. shift, he would only receive half an occurrence and would not be discharged. However, if the claimant did not work the 5:00 to 8:00 p.m. shift, he would receive one attendance occurrence for the day and the employer would discharge him for violating the employer's attendance policy. The claimant told DeVos he would not work the 5:00 to 8:00 p.m. shift and left. As a result, the claimant accumulated nine attendance occurrences and the employer terminated the claimant's employment on April 19, 2006.

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. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew his job was in jeopardy for attendance issues on April 18, 2006, but still made the decision to violate the employer's dress code policy by wearing flip flops to work on April 19. Although the claimant asserted he did not realize he could not wear shorts, he failed to read the employer's handbook to find out if he was allowed to wear shorts. The claimant did not do this or even take along a pair of pants even though he had shoes and socks in his car. Even after the employer sent the claimant home in the morning, he had the opportunity to work the night shift as scheduled if he wore a pair of pants and shoes and socks to work for the 5:00 to 8:00 p.m. shift. The claimant had plenty of time to get a pair of pants, but he failed to take any reasonable steps to get a pair of pants. The claimant asserted he did not have any money to buy gas to go home. The facts, however, indicate the claimant did nothing in an attempt to get a pair of pants to wear. It appears the claimant intentionally violated the employer's dress code so he would not be allowed to work, which would result in his ninth attendance occurrence. Even though the claimant had various opportunities to maintain his employment, he did not take advantage of these opportunities. In the end the employer discharged the claimant for violating the employer's attendance policy. The claimant's conduct on April 19 shows an intentional and substantial disregard of the standard of behavior the employer has a right to expect. The claimant committed work-connected misconduct. As of April 16, 2006, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's May 8, 2006 decision (reference 04) is affirmed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 16, 2006. 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.

dlw/kkf