

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WAYNE P JOHNSON
Claimant

APPEAL NO. 09A-UI-05122-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN HOME SHIELD CORP
Employer

OC: 02/22/09
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Wayne Johnson filed an appeal from a representative's decision dated March 18, 2009, reference 01, which denied benefits based on his separation from American Home Shield Corporation (AHS). After due notice was issued, a hearing was held by telephone on April 29, 2009. Mr. Johnson participated personally. The employer participated by Connie Janning, Human Resources Recruiter; Melissa Hackfort, Consumer Sales Supervisor; and Val Fitzpatrick, Telesales Manager. The employer was represented by Malia Maples of TALX Corporation.

ISSUE:

At issue in this matter is whether Mr. Johnson was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Johnson was employed by AHS from January 9, 2007 until February 24, 2009 as a full-time consumer sales representative. His discharge was prompted by two transactions that occurred on February 23, 2009.

During the first transaction, Mr. Johnson and the customer discussed the question of what date the customer wanted service to start. By the end of the conversation, the customer had decided to go with a March 1 effective date. However, Mr. Johnson entered the beginning date as February 28. During the next transaction, the customer asked that her credit card not be billed until the due date of April 30. The customer called at 11:45 a.m. As of 3:20 that afternoon, Mr. Johnson had not edited the customer's account to reflect the payment date that had been agreed upon. Instead, the customer was going to be billed that day, February 23. The employer believed Mr. Johnson allowed both customers to be billed in February to increase his sales for the month.

In making the decision to discharge, the employer also considered the fact that Mr. Johnson had been disciplined on December 9, 2008 because of violations of company policy. Whenever a

customer agrees to purchase a warranty, the sale is to be tape-recorded. The employer received several calls in November from individuals who received warranties they said they did not authorize. There were five such calls between November 17 and December 5. There was no tape recording to substantiate any of the warranties. Mr. Johnson indicated he did not understand how the problem occurred.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Johnson was discharged because he failed to take steps to edit customer accounts to reflect the desired billing dates. As of the end of the workday on February 23, he had not taken any steps to edit the billing dates for transactions that occurred prior to noon that day. Nor had he taken steps to have a supervisor make the needed changes.

The employer believed Mr. Johnson failed to make the edits on February 23 to reflect later billing dates so that both calls would count as sales for February. The administrative law judge is inclined to agree. He was disciplined in December for setting up warranties that had not been authorized. None of the warranties had the required tape-recording of the customer authorizing the warranty. The administrative law judge appreciates that this may sometimes occur. However, five such calls over the span of a few weeks suggest that Mr. Johnson was deliberately manufacturing sales to inflate his productivity. Therefore, it seems more likely than not that he deliberately failed to make the necessary edits on February 23.

Mr. Johnson's actions were clearly contrary to the type of behavior the employer had the right to expect. His actions had the potential of jeopardizing the employer's relationships with its customers. Fraudulent sales also had the potential of subjecting the employer to legal action. For the reasons cited herein, it is concluded that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

DECISION:

The representative's decision dated March 18, 2009, reference 01, is hereby affirmed. Mr. Johnson was discharged for misconduct in connection with his employment. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css