

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DERRICK FOX
Claimant

APPEAL NO: 16A-UI-09337-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GL ANKENY LLC
Employer

OC: 07/31/16
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 18, 2016, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 14, 2016. The claimant participated in the hearing. Ashley Clark, Human Resources Manager; Greg Waters, Fixed Operations Director; and Roger Bill, General Manager; participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time service advisor for GL Ankeny from February 1, 2015 to August 1, 2016. He was discharged for poor customer satisfaction index (CSI) scores and customer complaints.

The employer emails every customer a CSI survey after each repair completed by the employer. The acceptable score for the Midwest is 76 to 80 percent. The surveys ask questions such as whether the customer is satisfied with their vehicle repair; whether the vehicle was fixed correctly on the first visit; whether the customer felt valued; whether the service adviser worked with the customer on scheduling; and asks customers to rate the facility.

On June 29, 2016, the claimant received a written warning due to his CSI scores, failing to meet the customer service standard, give daily updates to customers in a timely manner, and return voice mail the day it was received. The CSI scores for the month are received early the following month but the service advisors can track their scores daily. The claimant's 12-month average ending in July 2016 was 47.5 percent. His score for May 2016, received in June 2016, was 33.3 percent, and contributed to the claimant's receipt of the written warning. The average

for the employer's service advisors in June 2016 was 50.8 percent and for July 2016 it was 55.1 percent. The warning stated that the consequence for the claimant's failure to meet the employer's performance expectations was termination. The employer told the claimant it would monitor his scores through July 2016.

On June 29 and June 30, 2016, the employer received phone calls from customers complaining about the claimant's treatment. The general manager also received an email complaining about the claimant. The customers said they were not updated on their vehicle repairs and felt the claimant did not care if they were informed. The customers did not feel they were high on the claimant's list of priorities.

The customer complaints were the "last straw" for the employer. The claimant's July 2016 CSI score was 33.3 percent. On August 1, 2016, the employer notified the claimant it was terminating his employment effective immediately.

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).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

While the CSI score expectation for the Midwest was 76 to 80 percent, the employer's service advisors as a group averaged 50.8 percent in June 2016 and 55.1 percent in July 2016. Only six to 12 percent of customers even respond to the CSI surveys and the customers who do tend to do so because they are dissatisfied. That said, however, the claimant knew the CSI scores are relied upon by the employer to assess his performance and he had the ability to ask his satisfied customers to complete the surveys as well.

The claimant testified that he could not "make everyone happy" and he did not believe the making customers "feel valued" portion of the CSI was "a big deal." He also stated other factors, such as the customer's feelings about the facility and the employer being short-handed played a role in the CSI. Most customers are not going to take the time to complete an email survey because of the facility or the employer being short-staffed. Those two portions of the CSI scores may have been beyond the claimant's control but the majority of the factors considered in the CSI, however, were well within the claimant's control as were the employer's other concerns as stated in the June 29, 2016, written warning. Treating customers professionally, courteously, and appropriately, were controlled by the claimant alone and did not have anything to do with being short-staffed or the facility. Most routine problems can be overlooked by a customer who feels valued by the service advisor and the evidence demonstrates the behavior exhibited by the claimant did not make several of the customers feel as if they were priorities for the claimant.

The customers the claimant knew and who needed high cost repairs seemed to be treated better by the claimant than those he was not familiar with or whose repairs were more minor in nature. That shows that the claimant was fully capable of treating customers in the manner expected by the employer. The fact the claimant failed to treat customers well, in a consistent manner, was evidenced by the two telephone complaints and one email complaint about the claimant's behavior toward customers during the last week of his employment. The claimant received a written warning June 29, 2016, about his CSI scores and his treatment of customers and knew his job was in jeopardy at that time. Despite that warning, the claimant's scores and behavior did not improve.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

DECISION:

The August 18, 2016, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs