

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTINE M JORGENSEN
Claimant

APPEAL NO. 12A-UI-11340-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN HOME SHIELD CORP
Employer

OC: 08/05/12
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

American Home Shield Corporation filed a timely appeal from a representative's decision dated September 11, 2012, reference 01, which held the claimant eligible to receive unemployment benefits. After due notice was issued, a telephone hearing was held on November 6, 2012. The claimant participated. The employer participated by Mr. Thomas Kuiper, hearing representative, and witnesses Anna Fitzpatrick, human resource manager, and Mary Tuel, customer service supervisor. Employer's Exhibit 1 was received into evidence.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Kristine Jorgensen was employed by American Home Shield Corporation from June 19, 2000, until August 8, 2012, when she was discharged for call avoidance in violation of company policy. Ms. Jorgensen was employed as a full-time Call Center Associate 1 and was paid by the hour. Her immediate supervisor was Mary Tuel.

Ms. Jorgensen was discharged on August 8, 2012, after she admitted disconnecting on calls that had been directed to her phone near the time the claimant had been scheduled for breaks or lunch periods. A review of the claimant's recent call transactions had shown numerous calls of very little time duration. Because of the unusual nature of the length of the calls, the claimant's immediate supervisor investigated and determined that on numerous occasions the claimant was picking up the phone and disconnecting without performing services as she was required to perform as a call center associate. Employees are aware that call avoidance or dropping calls intentionally is a violation of company policy and can result in termination from employment.

It is the claimant's position that although she engaged in intentionally disconnecting some calls, other calls were disconnected due to equipment issues. The claimant, however, did not bring the equipment issues to the attention of her employer prior to being discharged.

However, call avoidance is considered to be a serious violation of company policy jeopardizing the company's contractual agreements with its clients and is grounds for immediate termination on the first offense.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code section 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.

871 IAC 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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

The evidence in the record establishes that Ms. Jorgensen had the ability to perform her duties as a call center associate. The evidence also establishes the claimant was aware of the company's call avoidance policies and was aware that avoiding calls could result in her termination from employment.

When confronted about the reason for numerous calls of very short duration, Ms. Jorgensen admitted to her supervisor that she had been disconnecting calls that came in at or near the time of her break periods or lunch and was aware that avoiding calls could result in her termination from employment. Prior to being discharged, the claimant did not report to the company that she was having any equipment issues that would cause her to lose calls.

The administrative law judge concludes, based upon the evidence in the record, that the claimant's conduct was in willful disregard of the employer's interests and reasonable standards of behavior that the employer had a right to expect of its employees under the provisions of the Employment Security Law. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for determination.

DECISION:

The representative's decision dated September 11, 2012, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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