

**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**

**LASHAWNDA SILLIMAN  
5722 UNIVERSITY AVE  
DES MOINES IA 50311**

**RAIN SOFT OF DES MOINES INC  
2501 MARTIN LUTHER KING  
DES MOINES IA 50310-6122**

**Appeal Number: 06A-UI-02818-ET  
OC: 02-05-06 R: 02  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct  
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 22, 2006, 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 March 30, 2006. The claimant participated in the hearing. Sandy Anderson, Owner, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last known address of record on February 22, 2006. The claimant received the decision. The decision contained a warning that

an appeal must be postmarked or received by the Appeals Section by March 4, 2006. That date fell on a Saturday so the appeal was due March 6, 2006. The appeal was filed with Promise Jobs March 6, 2006. Consequently, the administrative law judge concludes the claimant's appeal is timely.

The claimant was employed as a part-time survey taker for Rain Soft of Des Moines from November 29, 2004 to January 30, 2006. The claimant performed telemarketing services for the employer, who expected 100 surveys to be completed each week but the claimant's numbers continued to drop until she was averaging four to six per week. Because of the "do not call" lists telemarketing has become more difficult and consequently the employer dropped the required numbers to 75 and then 65. During the week of January 9 through January 13, 2006, the claimant recorded 10 surveys while another employee had 35; during the week of January 16 through January 20, 2006, the claimant's children were ill and she did not record any surveys done and was also a no-call no-show January 20, 2006; during the week of January 23 through January 27, 2006, the claimant recorded 14 surveys and another employee had 53; during the week of January 30 through February 3, 2006, the claimant recorded four surveys and another employee had 78. The employer bought new calling lists February 8, 2006, and the supervisors who worked for an hour recorded four to six surveys. The employer issued a verbal warning to the employees January 9 or 10, 2006, and although the claimant was not there that day she was told about the warning and that employees would be terminated if their numbers did not improve. The claimant was discharged January 30, 2006, for failure to meet the expected numbers.

#### 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 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While there is no question that the "do not call" laws have had a great impact on telemarketing, the supervisors and at least one other employee of the four telemarketing employees were able to meet or at least get close to their expected numbers. The claimant's numbers suggest she did not make the calls she needed to make in order to meet the numbers expected by the employer. Consequently, the administrative law judge concludes the claimant's actions between January 9, 2006 and February 3, 2006, were not isolated incidents and her 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. Therefore, the employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

#### DECISION:

The February 22, 2006, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

je/tjc