

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHEN P GENOVESE
Claimant

APPEAL NO. 11A-UI-09692-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARKETLINK INC
Employer

OC: 06/19/11
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Marketlink, filed an appeal from a decision dated July 15, 2011, reference 01. The decision allowed benefits to the claimant, Stephen Genovese. After due notice was issued a hearing was held by telephone conference call on August 15, 2011. The claimant participated on his own behalf. The employer participated by Human Resources Manager Amy Potratz, Supervisor Terry Woods, and Call Center Manager Kim Higginbotham.

ISSUE:

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

FINDINGS OF FACT:

Stephen Genovese was employed by Marketlink from April 11 until June 22, 2011 as a full-time CSR. He received training on making outbound calls and how to “code” them in the system. If a potential customer says they are not interested it should be coded as “not interested.” If a customer hangs up without speaking with the CSR, that is coded as a “hang up” and that number is then removed from the system and will not be dialed again.

On June 22, 2011, Supervisor Terry Woods was on the call floor and observed the claimant at work. Mr. Woods heard Mr. Genovese speak with the customer and the customer speak back. At some point the call was terminated but it was coded as a “hang up.” Mr. Woods pulled the claimant’s call record for that day and found he had coded 126 calls as “hang ups.” He listened to a random sample of 20 calls and found 15 of those coded as hang ups should have been coded as “not interested” which meant the number would be called back. But by coding them as “hang ups” the number would be removed from the system and a potential customer was removed from the base.

Mr. Woods spoke with Mr. Genovese about the mis-coding of the calls. Although he asked to listen to some of the calls, before they could be retrieved from the system, he asked if he was going to be fired. When Mr. Woods responded that he would, the claimant said his ride was waiting and left the meeting.

Stephen Genovese has received unemployment benefits since filing a claim with an effective date of June 19, 2011.

REASONING AND CONCLUSIONS OF LAW:

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.

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 claimant deliberately miscoded approximately 80 percent of his calls that day as "hang ups" which removed the potential customer from the sales data base. The claimant had received proper training on how to code these calls but ignored those instructions. This caused a potential revenue loss to the employer. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code § 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 claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of July 15, 2011, reference 01, is reversed. Stephen Genovese is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs