

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MEGAN K OAKES

Claimant

APPEAL NO. 12A-UI-10613-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN HOME SHIELD CORP

Employer

OC: 07-22-12

Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 22, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on October 1, 2012. The claimant did not participate. The employer did participate through Amy Platt, Human Resources Generalist, Jodi Jorgenson, Manager of Real Estate Sales and Sue Kruse, Supervisor of Sales and was represented by Tom Kuiper of TALX UCM Services Inc. Employer's exhibit one was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-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 real estate sales associate full time beginning March 8, 2010 through July 23, 2012 when she was discharged. A customer called into the employer on July 20 to complain that the claimant had hung up on him during their conversation. The employer investigated by listening to the call in question and then pulling ten other short calls the claimant had made during the two weeks prior to the complaint. During the monitored calls the employer discovered that the claimant had hung up on several more customers. At no time did the claimant report any telephone problems to her supervisor. When confronted by management at her termination meeting the claimant did not deny hanging up on customers. The claimant had received the employer's handbook which put her on notice that even one instance of hanging up on a customer would lead to her discharge. After the employer discovered several instances within a two-week period, the claimant was discharged.

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.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). Claimant's repeated failure to accurately perform her job duties, that is to not hang up on the customer, is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job related misconduct. Benefits are denied.

DECISION:

The August 22, 2012 (reference 01) decision is reversed. 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. Inasmuch as no benefits were claimed or paid, no overpayment applies.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css