

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA E REESE

Claimant

APPEAL NO. 17A-UI-03626-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EGS CUSTOMER CARE INC

Employer

OC: 02/26/17

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

EGS Customer Care (employer) appealed a representative's March 23, 2017, decision (reference 02) that concluded Joshua Reese (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 8, 2017. The claimant participated personally. The employer participated by Turkessa Newsome, Human Resources Generalist; Melissa Villalpando, Operations Manager; and Sandy Johnson, Team Lead. The employer offered and Exhibit One was received into evidence. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 9, 2015, as a full-time customer service representative. The claimant signed for receipt of the employer's handbook on November 11, 2015, and May 25, 2016. The employer has a policy that finds "[e]ngaging in any form of fraud or dishonesty toward the Company, co-workers, clients, consumers, or customers" would be "grounds for progressive disciplinary action up to and including termination of employment". If employees made mistakes in entering data, the employee could set a reminder the following day or two after the transaction to correct the error. Employees received bonuses for sales. The employer issued the claimant one warning during his employment for attendance.

The claimant normally handled customer telephone calls. In the last month or so of the claimant's employment he was learning to engage in customer service by internet chat. Usually the chat session ended and the claimant was allowed time to complete the transaction on his work computer before the next chat session started. Without notice from the company, the claimant observed that if a customer unexpectedly ended the chat, a new chat session would

start immediately. The claimant was unaware that it was a new customer in the session unless the customer typed something in the conversation to alert the claimant.

On February 20, 2017, the employer suspended the claimant for coding a customer's subscription as a "save" rather than a "cancel". The claimant told the employer it was an accident due to being overworked. On February 23, 2017, the employer terminated the claimant.

The claimant filed for unemployment insurance benefits with an effective date of February 26, 2017. The employer provided the name and number of Larry Porter as the person who would participate in the fact-finding interview on March 22, 2017. The fact finder called Larry Porter but he was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. *Huntoon v. Iowa Department of Job Services*, 275 N.W.2d 445 (Iowa 1979). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988). The employer discharged the claimant for poor work performance and has the burden of proof to show evidence of intent. The employer did not provide any evidence of intent at the hearing. The claimant's poor work performance on one occasion was a result of his lack of training, a change in the chat system, or an accident. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's March 23, 2017, decision (reference 02) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn