

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DIANA K ALLEN**  
Claimant

**APPEAL NO. 09A-UI-09735-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MARKETLINK INC**  
Employer

**OC: 05/24/09**  
**Claimant: Appellant (1)**

Section 96.5.2-a – Discharge

**STATEMENT OF THE CASE:**

Diana K. Allen filed a timely appeal from an unemployment insurance decision dated June 30, 2009, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held July 22, 2009 with Ms. Allen participating. Account Supervisor Cheryl Klocko, Sales Manager Kelley Woods and Sales Supervisor Dave Stewart participated for the employer, Marketlink, Inc. Employer Exhibit One was admitted into evidence.

**ISSUE:**

Was the claimant discharged for misconduct in connection with her employment?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Diana K. Allen was employed by Marketlink, Inc. from September 15, 2003 until she was discharged May 28, 2009. She last worked as a telephone sales representative. Ms. Allen was discharged for submitting false FMLA papers to the employer. The papers were faxed to the employer by Ms. Allen's son. After noting some discrepancies in the forms, the employer contacted Altoona Family Care Center, providing them with a copy of the forms. The medical office confirmed that they had not been filled out by their staff.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. 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 administrative law judge largely discounts the claimant's testimony. At one point in describing Exhibit One, the claimant agreed that she also did not have one of the pages the employer thought that it had provided. Later in the hearing, the claimant denied having Exhibit One with her. The employer's evidence was plausible and consistent. It persuades the administrative law judge that the claimant caused false medical documentation to be submitted. Benefits are withheld.

**DECISION:**

The unemployment insurance decision dated June 30, 2009, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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