

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TROY D WILSON

Claimant

APPEAL NO: 14A-UI-08324-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THOMAS L CARDELLA & ASSOCIATES INC

Employer

OC: 07/13/14

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Troy D. Wilson (employer) appealed a representative's August 4, 2014 (reference 01) decision that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Thomas L. Cardella & Associates, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 2, 2014. The claimant participated in the hearing. Barbara Toney, of Equifax/TALX Employer Services, appeared on the employer's behalf and presented testimony from one other witness, Jason Tylee. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on April 28, 2014. He worked full time as a customer care agent at the employer's Cedar Rapids, Iowa call center. His last day of work was June 29, 2014. The employer discharged him on that date. The stated reason for the discharge was a serious violation of the employer's procedures.

The claimant was handling a sales call on June 28 and had gotten the agreement of the customer to purchase one of the service packages. He then proceeded to seek to "up-sell" her on another service package. She had him stop and asked if this was a different program. When he said yes, she said she was not interest and was also revoking her agreement on the first program. He made at least three arguments to try to persuade her to change her mind back, but then ended the call with language indicating that the base sale was complete and put the transaction through as a sale.

The employer found the claimant's continued rebuttal to the customer after she had said no, and particularly his putting the transaction through as a sale when she had revoked her agreement, to be a violation of the employer's policies which provide for immediate discharge for such offenses. The claimant acknowledged that when he made the repeated rebuttals he knew he was pushing the margin but believed that if he was able to save the sale it would be "forgiven." The claimant asserted that when he dispositioned the transaction as a sale that he had just hit the wrong button by mistake; the administrative law judge does not find this explanation to be credible.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's repeated attempt to persuade the customer to change her mind and particularly his putting through the transaction as a sale when the consent had been revoked shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's August 4, 2014 (reference 01) decision is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of June 29, 2014. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided his is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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