

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MARCUS P FLEMING**  
Claimant

**GO DADDY SOFTWARE INC**  
Employer

**APPEAL 19A-UI-02360-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/03/19**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the March 19, 2019, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment for conduct not in the best interest of the employer. The parties were properly notified of the hearing. A telephonic hearing was held on April 23, 2019. The claimant, Marcus P. Fleming, participated. The employer, Go Daddy Software, Inc., participated through Kris Meyer, Employee Relations Specialist; and Joshua Meike, Senior Site Leader of Hiawatha Location. Claimant's Exhibit A and Employer's Exhibit 1 were received and admitted into the record without objection.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as a consultant, from January 5, 2014, until March 5, 2019, when he was discharged.

On February 21, 2019, claimant took a call from a customer who requested to cancel her account and receive a refund for the platform she had purchased. The customer had purchased this platform to host a website that no longer existed, so she had no need for the product any longer. The customer purchased the platform more than 30 days earlier, and it fell outside the refund policy. Previously, the customer had been told by another employee that she could call in and get a refund. Claimant initially went to his lead and told him about the customer's issue. The lead said he would listen to the previous call and would get back to the customer. Claimant then went back and spoke to the customer again. He told the customer that if she was not able to get her refund, she could call back and request a switch to a different platform. Effectively, this would allow the customer to "purchase" the new platform with the funds she had previously spent on the old platform.

During the February 21 call, claimant made several statements that the employer viewed as problematic. He told the customer, "I've got to be careful with what I tell you, because again, they record me even. But there are ways we can get creative with the refund..." He also said, "They'd be able to refund you to do a platform change and you don't need to use the entire refund toward the new platform so you could at least get something back if you did that." Claimant explained that he said these things to make the customer believe he was on her side and to try and retain the customer for the employer.

The employer maintains a Refund Toolkit that sets forth all of its policies on refunds. This Refund Toolkit includes the employer's 30-day refund policy. Under this policy, most newly-purchased products are ineligible for refunds after 30 days from the date of purchase. (Exhibit A, page 2) There is an exception to the 30-day policy if a customer wants to move from one platform to another platform. The Refund Toolkit includes a specific section on platform changes. (Exhibit A, pages 3 and 4) This policy allows a customer to transfer from NextGen cPanel to Website Builder. (Exhibit A, page 4) Under this policy, all platform changes must be made through ISC. (Exhibit A, page 3)

On May 2, 2018, claimant received a final written warning for coaching a customer into receiving a refund. Claimant acknowledges that he was "sketchy" and crossed a line in helping the customer on this instance. On this occasion, claimant coached the customer on how to tell the employer that he needed a refund when he did not qualify for one. Claimant told the customer to ask for a mobile site, which would allow him to get a refund, even though the customer did not want or need a mobile site and there was no technical reason for this change.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

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).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). When a discharge is based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer has provided credible testimony regarding the end of claimant's employment.

In this case, claimant was discharged for impermissibly coaching a customer on how to receive something she would not otherwise be entitled to receive. Claimant's actions went beyond good-faith efforts to retain the customer. He gave the customer specific steps on how to call in and receive a refund of some of the funds she used to purchase the cPanel. Even if the customer would have only received a partial refund from this transaction, it was still more than she was otherwise entitled to. The employer has established the claimant gave the customer instructions on how to circumvent the refund policy and get money back from the employer, which affected both the employer's bottom line and the customer's expectations for future interactions with the business. The employer met its burden of proving that claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

**DECISION:**

The March 19, 2019, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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