

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time collector for The CBE Group from November 25, 2002 to August 19, 2005. He was discharged for failing to follow the Federal Debtor Collection Protections Act (FDCPA). On August 26, 2004, the claimant received a verbal warning for excessive complaints from consumers, not following the employer's procedures, and not behaving in a professional manner. On February 14, 2005, the claimant received a verbal warning after his supervisor told him to remove a phone number when a third party told the claimant the debtor no longer lived there. On May 23, 2005, the claimant received a written warning after he was monitored by the compliance department and they discovered the claimant spoke to a male who answered the phone and said he did not know the debtor but the claimant did not remove the phone number or document that the conversation ever took place. The claimant's actions could have resulted in a direct FDCPA violation. The warning also stated that the claimant had been warned about similar actions before and he was expected to follow the employer's standards and the FDCPA at all times. The employer warned the claimant that it would be monitoring his performance (Employer's Exhibit 1). The claimant signed that warning. On June 20, 2005, the claimant received a verbal warning for using a status code that he was not supposed to have access to or use with regard to a dispute letter received from a debtor. On July 20, 2005, the claimant received a written warning after being monitored three times that day and the employer discovered that when a man answered the phone and stated the debtor did not live there the claimant still asked him to take a message and said he would call back but did not document that he told the man he would try back or that he left a message with the man or that he continued to call that number in violation of policy. Later that day the claimant called a debtor's mother-in-law but she indicated she only had an emergency number for her daughter-in-law. He asked her to take a message and deliver it to the debtor and she agreed to try to do so. He documented that he left a message with the mother-in-law. The claimant then called a debtor's residential number and a child answered the phone and said the debtor did not live there. The claimant then asked the child for another phone number and the child said the debtor had a cell phone and the claimant asked for the cell phone number and asked if the claimant was at work. The child said she was not but the claimant misdocumented the conversation according to the employer's policy. The warning stated that another incidence of non-compliance with the employer's policy or FDCPA would result in termination and the claimant was expected to accurately document the manner in which the call happened and must remove a telephone number when informed the number is not one where the debtor can be reached (Employer's Exhibit Two).

On August 17, 2005, the employer monitored two more of the claimant's phone calls. On the first call the claimant called the debtor's grandfather, who stated she lived 80 miles away and he did not know her phone number but gave the claimant the debtor's father's phone number. The claimant told the grandfather that he had already tried that number but never receives an answer when he calls there. The claimant then asked the grandfather why he did not know his granddaughter's phone number and then asked that he take a message for her. The grandfather agreed to take a message and said he would try to talk to them the following weekend and the claimant said that was not good enough and to cancel the message and he had more questions to ask the grandfather. He asked for the debtor's phone number and the grandfather again said he did not have it and the claimant asked why he did not know his own granddaughter's phone number. The grandfather again said he could relay a message to the debtor's father and the claimant asked for that number. The grandfather explained he had already provided that number. After the claimant made further inappropriate comments the grandfather became upset and the claimant told him to disregard the message and ended the

call and documented that the grandfather would not provide any information and he did not leave a message (Employer's Exhibit Three). The claimant also called a number and asked for the debtor. The man that answered stated the debtor was in a nursing home and had an attorney. The man offered the claimant the attorney's phone number and the claimant asked if the attorney would give him the debtor's phone number and the man stated he did not think so because the debtor was in a nursing home. The claimant asked why she had an attorney and the man explained she needed an attorney to handle her business affairs while she was in the nursing home and the man told the claimant he would not give him any more information unless he told him why he was calling. Despite being told the debtor had an attorney, the claimant called her at the nursing home, without notifying her attorney. After the last two incidents, on August 19, 2005 the employer terminated the claimant's employment for violating the employer's policy as well as FDCPA (Employer's Exhibit Three).

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 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant continues to defend his actions with regard to his debt collection activities, the situations outlined above clearly show several violations of not only the employer's policy but also the FDCPA. The claimant was trained in the proper procedures and although he contends the employer, through his supervisors, condoned his tactics, it was still his responsibility to know and follow the employer's policies as well as those of the FDCPA. The warnings put the claimant on notice that a further incident could result in termination and the claimant's actions August 17, 2005, were not isolated incidents. The claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. Consequently, the administrative law judge concludes the employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The September 27, 2005, reference 02, decision is affirmed. The 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.

je/kjw