

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIM P WILLER
Claimant

APPEAL NO. 12A-UI-09245-H2

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOB BROWN CHEVROLET
Employer

OC: 10-16-11
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 30, 2012, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on September 26, 2012. The claimant did participate. The employer did participate through Tim Manning, General Sales Manager; David Block, Finance Director; and was represented by David Wetsch, Attorney at Law. Employer's Exhibits One through Five were entered and received into the record. Claimant's Exhibits One through Four were entered and received into the record.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a business manager full time beginning November 1, 2011 through June 25, 2012 when he was discharged. The employer sells cars to the general public. As part of an ongoing General Motors promotion customer's purchasing cars were offered a credit card application for a General Motors credit card. The claimant was responsible for offering the credit card to the customers when he was completing the closing paperwork for each of the sales. The customer had to agree to the credit card application being submitted to HSBC, the processing agent for the credit card company. HSBC had no right to the customer's private financial information unless the customer specifically agreed that it could be disclosed to them. If the customer chose not to apply for the GM credit card, then HSBC would never have access to that customer's private financial information.

The claimant was rewarded with a \$50.00 bonus or "spiff" for every customer that he signed up for the credit card. On June 13, the claimant offered the credit card to customer BT. The claimant admits that BT specifically declined the credit card application and made it clear that he was not interested in receiving the promotional credit card. Despite the customer's clear indication that he was not interested in receiving the credit card, the claimant wrote the word "declined" in the signature box of the application and then completed the online application and then faxed the application into HSBC. By completing the online application the claimant falsified

to HSBC that the customer agreed to obtain the credit card and agreed to the release of financial information to HSBC. The claimant knew from a conversation with Mr. Block prior to June 13, 2012 that anything written in the signature block of the form, even the word "declined" would be read by the computer scanning the applications as a signature. The claimant purposely took advantage of that known glitch in order to obtain the \$50.00 bonus. There would have been no reason to fax anything to HSBC when customers did not agree to make the application. The claimant intentionally falsified the online application that he completed for customer BT and submitted false information to HSBC when he faxed in the paperwork for BT's application. Eventually customer BT received the GM credit card in the mail and complained to the employer. BT was understandably angry with the employer and threatened a lawsuit. The employer settled with BT for \$500.00 in order to avoid a future lawsuit. The employer learned that the claimant had falsified BT's approval of his credit application and then learned from several other customers that he had done the same thing to each of them. On at least three occasions the claimant submitted credit card applications to HSBC on behalf of customers of the dealership who clearly indicated they did not want the credit card and did not give the claimant permission to release their personal financial information to HSBC. The claimant's actions were violation of the employer's policy as well as state and federal law.

By disclosing confidential financial information of the employer's customers to a third party, HSBC, the claimant jeopardized the dealership's reputation in the community which could result in lost sales. He also exposed the dealership to liability as they were forced to settle with a customer for a violation committed by the claimant to avoid a more costly lawsuit. The claimant's excuse to the employer that it must have been an accident is not credible in light of the fact that he submitted three separate applications which had not been approved by any of the customers involved.

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 § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). It is undisputed that the claimant submitted BT's credit card application to HSBC without BT's permission as well as at least two other customers. He knew or should have known that he was not allowed to do so once the customer said no. The administrative law judge is persuaded that the claimant was simply trying to obtain the \$50.00 bonus by submitting credit card applications when he knew the customer did not want the credit card. His actions were not only a violation of the employer's policies, but a violation of state and federal law. The claimant's actions are substantial misconduct that disqualifies him from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The July 30, 2012 (reference 03) 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css