

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT A SMITH
Claimant

APPEAL NO: 12A-UI-05281-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARKETLINK INC
Employer

OC: 08/21/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The employer appealed a department decision dated April 30, 2012, reference 05, that held the claimant was not discharged for misconduct on April 3, 2012, and benefits are allowed. A telephone hearing was held on May 30, 2012. The claimant participated. Heidi Hatten, HR Representative, participated for the employer. Employer Exhibit One was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on January 16, 2012, and last worked for the employer as a full-time sales representative on April 3, 2012. He received the employer ethics policy in an employee handbook. Fraud is considered misrepresentation to a customer when giving false information about the service price or terms of promotion. Cramming is adding a customer product or service without knowing consent.

The employer issued claimant a written warning on March 7 after an account manager complaint the day before. Claimant was warned for failing to obtain customer consent or customer comprehension of the services provided. He was allowed to listen to the call and he acknowledges he failed to add taxes and fees when quoting the service price. He was advised a further infraction could result in termination.

The employer terminated claimant on April 3 after an account manager complaint on March 31 for the same infraction that occurred in the prior warning. Claimant was not allowed to listen to the call and denies any ethics violation.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for a current act of misconduct in connection with employment on April 3, 2012.

The employer did establish an ethics policy violation and issued an appropriate warning to claimant on March 7 that is an act of misconduct. The employer did not offer specific factual information as to what claimant did on the March 31 customer call so misconduct is not established. Claimant denies any ethic violation, and he was not allowed to listen to the call.

DECISION:

The department decision dated April 30, 2012, reference 05, is affirmed. The claimant was not discharged for a current act of misconduct on April 3, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs