

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH C BOGGS
Claimant

APPEAL NO. 08A-UI-08943-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TM1 STOP LLC
Employer

**OC: 08/31/08 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Joseph Boggs filed an appeal from a representative's decision dated October 1, 2008, reference 01, which denied benefits based upon his separation from TM1 Stop LLC. After due notice was issued, a hearing was held by telephone on October 20, 2008. Mr. Boggs participated personally. The employer participated by Ms. Corey Poulsen, Center Director.

ISSUE:

At issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from September 22, 2003 until September 5, 2008 when he was discharged from employment for violation of policy. Mr. Boggs was employed as a full-time telephone sales agent and was paid by the hour plus commissions.

Mr. Boggs was discharged when it was determined that he had repeatedly failed to follow company requirements by verifying through a computer system that individuals called to "win back" as customers were in fact past customers and not currently AT&T clients.

Telephone sales agents who were assigned to the program were provided a specific computer access that would allow them to identify whether a person being called was a current or past AT&T customer. Sales agents were required to make this verification before offering the customer an incentive, accepting it and being potentially eligible for commissions on the sale. Mr. Boggs as well as other agents were trained in the system and the claimant demonstrated his proficiency. The claimant had one documented difficulty with his "BI" access system in August of 2008. Mr. Boggs was provided an updated password and the matter was documented.

Because of recent access given to the company by their client, AT&T, TM1 Stop LLC had the ability to check the status of win back incentives and determined that out of 72 sales that the claimant had recently made none were authorized for win back sales. As the claimant had been given a written final warning for fraudulent sales practices in December of 2007, a decision was made to terminate Mr. Boggs from his employment. At the time of discharge Mr. Boggs offered no explanation, rationale or reason for providing win back incentives to individuals who were current AT&T customers in violation of policy. Sales agents were provided a commission on the sale of incentive win back programs. If unauthorized sales are made by sales representatives the company pays incentives that are unjustified and endangers its sales contract with its client, AT&T.

It is the claimant's position that he complained on a daily basis to his supervisor that his verification system was never operable and that he had offered no explanation at the time of discharge because he felt that the company would not listen to his side.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Boggs was discharged for misconduct in connection with the employment. It does.

The evidence in the record establishes that the claimant was trained on the BI system and demonstrated his proficiency in utilizing the system. Mr. Boggs was aware that incentive sales for win back programs were available only to past AT&T customers and that current customers did not qualify for the sales. The evidence establishes that the claimant had been previously warned specifically for similar conduct and was aware that any future violation would result his termination from employment. The evidence in the record also establishes that Mr. Boggs had complained on one occasion that his BI system was inoperable and that the company acted immediately to provide the claimant an updated access and documented the problem. At the time of discharge the claimant provided no reasonable explanation for his conduct.

Although the administrative law judge is cognizant that Mr. Boggs maintains that he complained "everyday" to his supervisor that his system did not work, the administrative law judge finds the claimant's testimony strains credibility. The employer has sustained its burden of proof in establishing that the claimant was aware of his job responsibilities, had demonstrated the ability to perform the duties of his job but failed to do so after being specifically warned.

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.

For the reasons stated herein the administrative law judge concludes the claimant was discharged for misconduct in connection with his work. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated October 1, 2008, reference 01, is affirmed. The claimant was discharged for misconduct in connection with his work. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, providing that he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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