

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC R BABE
Claimant

APPEAL NO. 11A-UI-10143-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN HOME SHIELD CORP
Employer

**OC: 07/03/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

American Home Shield Corporation filed a timely appeal from a representative's decision dated July 22, 2011, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on August 24, 2011. Claimant participated personally. The employer participated by Ms. Jamie Cooper, Attorney at Law, and witness, Karen Carrigan, Customer Relations Supervisor. Employer's Exhibits One, Two, and Four were received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Eric Babe was employed by American Home Shield Corporation from November 7, 2008 until June 23, 2011 when he was discharged for violation of company policy. Mr. Babe worked as a full-time customer relations associate and was paid by the hour. His immediate supervisor was Karen Carrigan.

Mr. Babe was discharged after he failed to document a voice mail message from a client. Due to the nature of the company's business providing home warranties, the company requires employees to document communications with clients by electronically attaching the communication to the company's computer system or by typing a synopsis of the communication into the system. Mr. Babe was aware of the company's requirements and understood the reason for them. Because the company was regulated by various states, due to the nature of their business, the claimant agreed the documentation was necessary.

Mr. Babe had been warned for failure to document communications in April 2011. Although claimant had not been previously warned, it was categorized as a "final warning" because under company policy employees are subject to discharge if they violate the policy on two occasions.

Mr. Babe was discharged after he failed to type in a synopsis of a voice mail communication that he received from a client on June 23, 2011. It was not the claimant's intention to violate the policy. Mr. Babe neglected to document the communication due to understaffing and the requirement that he perform additional duties for that reason. Because of the importance of the rule of the company, a decision was made to terminate Mr. Babe from his employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

The employer has the burden of proof in this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

When based upon carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa 1988).

In this matter the evidence establishes that Mr. Babe did not intentionally violate the company’s documentation rule but inadvertently neglected to do so because of understaffing and the requirement that he perform a number of additional duties. The claimant did not intend to violate the company rule.

The question before the administrative law judge is not whether American Home Shield Corporation has a right to discharge Mr. Babe for these reasons but whether the discharge is disqualifying under the provisions of the Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above-stated reasons the administrative law judge concludes the claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative’s decision dated July 22, 2011, reference 01, is affirmed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided that he meets all other requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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