

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERRY L LEHNER**  
Claimant

**APPEAL NO. 11A-UI-06221-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**INFINITY CONTACT INC**  
Employer

**OC: 04/03/11**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated April 29, 2011, reference 01, which held the claimant not eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on June 7, 2011. The claimant participated personally. Participating as a witness for the claimant was Mr. Mario McCall, a former employee. Participating as a witness for the employer was Ms. Jenny Wildman, Human Resource Manager.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Terry Lehner was employed by Infinity Contact Inc. from December 6, 2010 until April 5, 2011 when was discharged for a sales error. Mr. Lehner worked as a full-time customer service representative and was paid by the hour.

The claimant was discharged from the call center where he was employed because a customer had called a call center client to complain that the claimant had sold the wrong product. Because the complaint had been made directly to the client of the employer, a decision was made to terminate Mr. Lehner from his employment. At the time of termination the claimant had received two previous warnings for quality errors.

In the position of a call center call representative, Mr. Lehner was required to field numerous calls and to utilize numerous computer screens and dropdown devices to obtain correct information and pricing. Due to changes implemented by the client, the call center employees were not always able to identify all current sales pricing that the client was offering, causing errors, at times, by call center employees. Although the claimant had been issued disciplinary warnings for quality assurance issues, he nevertheless had also received an increase in pay and was considered a good performer otherwise.

## REASONING AND CONCLUSIONS OF LAW:

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

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying the termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based upon carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. 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).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contract to public policy but if it fails to meets its burden of proof to establish job-related

misconduct as the reason for the separation the employer incurs potential liability for unemployment insurance benefits related to that separation.

The evidence in the record does not establish wrongful intent on the part of Mr. Lehner. The claimant was attempting to work to the best of his ability in a high volume sales atmosphere where numerous screens and dropdowns must be utilized in order to obtain necessary information. At times the information available to sales representatives is not current nor consistent with information that the client themselves has provided to potential buyers through outside means.

While the decision to terminate Mr. Lehner may have been a sound decision from a management viewpoint, the evidence in the record is not sufficient to establish wrongful intent or that the claimant's carelessness or negligence was of such a reoccurrence or magnitude so as to manifest equal culpability under the provisions of the Employment Security Law. Benefits are allowed providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated April 29, 2011, reference 01, is reversed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

css/css