

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 05A-UI-05679-H2T
OC: 04-10-05 R: 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 11, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 16, 2005. The claimant did participate. The employer did participate through Kellie Martinez, Mortgage Assistant and (representative) Rami Khayat, Customer Service Supervisor. Claimant's Exhibit A was received. Employer's Exhibit One was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a switchboard operator/customer service representative I full time beginning April 21, 2003 through April 8, 2005 when he was discharged. On April 6, the claimant was rude to a coworker who called on the phone seeking information. The coworker, Kellie Martinez, had been instructed to call the switchboard telephone number answered by the claimant. An e-mail Ms. Martinez received indicated she should ask for the cancellation team. When she asked for the cancellation team the claimant told her, "I do not know why everyone keeps calling this number, this is not the right number and there is no information I can give you." The claimant refused to help her and kept telling her that the number she had been given was incorrect. The conversation ended. Ms. Martinez called back approximately three minutes after the first phone call ended and asked to speak to the claimant's manager because she felt she had been treated so poorly by the claimant. When she asked for the manager's name and phone number the claimant initially told her he had given her all the information she needed. After arguing with Ms. Martinez for a few moments, the claimant provided the name of his manager but refused to provide the phone number for his manager. When the claimant refused to provide the phone number of his manager, Ms. Martinez asked him why he would not provide the number and he told her she could look it up in the Global Directory. He refused to speak with her any further or provide her the number she had requested. The claimant then told her that "I have another line lit up and we have been instructed to take the next call when our light lights up", and then he hung up on her. Shortly thereafter, Ms. Martinez wrote a note that detailed the conversation she had with the claimant. Ms. Martinez sent the note to the claimant's Supervisor, Rami Khayat.

The claimant also sent an e-mail to Mr. Khayat indicating that he would probably be hearing from Ms. Martinez. In his e-mail the claimant attributed Ms. Martinez's dissatisfaction with him on the phone to the fact that she was a female.

The claimant had been previously placed on a final written warning on May 20, 2004 when another Supervisor witnessed him hanging up on a customer. At that time the claimant was warned that another hang up call would result in his termination.

Mr. Khayat clearly indicated at hearing that there was no such policy that instructed or required the claimant to hang up on a phone call when some light lit up. The claimant hung up on Ms. Martinez because he no longer wished to speak with her, not because he had completed the call or provided her with the information she requested, specifically his manager's phone number.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

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 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

An employer has a right to expect employees to conduct themselves in a certain manner. The claimant was expected to be courteous to callers, including coworkers as well as outside customers. The testimony of Ms. Martinez in conjunction with her e-mail of April 7 convinces the administrative law judge that the claimant was rude to her and specifically that he hung up on her on at least one occasion. The claimant had been previously warned about hanging up on callers. The claimant disregarded the employer's rights by treating Ms. Martinez in a rude, discourteous manner and by hanging up on her. In conjunction with his previous disciplinary history for the same conduct, the claimant's disregard of the employer's rights and interests is misconduct. As such, the claimant is not eligible to receive unemployment insurance benefits. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department

in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The May 11, 2005, reference 01, decision is reversed. 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. The claimant is overpaid benefits in the amount of \$2,691.00.

tkh/pjs