

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE L BEYER
Claimant

APPEAL NO. 11A-UI-11647-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARKETLINK INC
SANDY DUNN
Employer

OC: 07/31/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated August 26, 2011, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on September 28, 2011. Claimant participated personally. Participating as witnesses for the claimant were Carol Smires and Margaret Vaughn, former employees. Employer participated by Michelle Chaney, Sales Supervisor, and Megan Hopkins.

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 all of the evidence in the record, the administrative law judge finds: Michelle Beyer was employed by Marketlink, Inc. from January 28, 2010 until August 5, 2011 when she was discharged from employment. Ms. Beyer worked as a part-time telephone sales representative and was paid by the hour. Her immediate supervisor was Michelle Chaney.

Ms. Beyer was discharged on August 5, 2011 based upon the employer's belief that the claimant was intentionally engaging in "call avoidance" by not quickly enough disconnecting from previous inbound calls thus delaying the next inbound call to her work station.

The decision to terminate the claimant was based upon Ms. Chaney's review of calls on or about August 4, 2011. At that time Ms. Chaney noted a four-minute delay between calls and concluded that the claimant was intentionally avoiding the next call in violation of company policy. Because the claimant had previously been warned for failure to follow one or more of the other procedures required by the company's clients, a decision was made to terminate Ms. Beyer from her employment. When questioned about the matter, Ms. Beyer had denied intentionally avoiding calls.

It is the claimant's position that subsequent calls are at times delayed because of circumstances beyond the control of the telephone sales representative. At times representatives are required to repeatedly input commands into the company's computer system before the commands are implemented. Error messages often come up on computer screens that delay the TSR from further progress on incoming calls. Claimant denies intentionally avoiding calls in violation of policy.

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 § 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 insurance 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 insurance 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).

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 upon such past acts. The termination of employment must be based on a current act. See 871 IAC 24.32(8).

In this matter the employer's witness testified that it was her perception that the claimant had engaged in call avoidance because at times there was a delay in the claimant being routed a new inbound call and that on one occasion there was a four-minute delay between calls. The claimant and her witnesses have supplied reasonable explanations for delays that often occurred causing telephone sales representatives from being unable to quickly allow the next inbound call to come to their work station. It appears that error screens and computer glitches often delay inbound calls through no fault of the telephone sales representative. The administrative law judge also notes that telephone sales representatives are required to comply with numerous client requirements regarding scripting, responses to questions and re-offering of services or products.

The administrative law judge concludes that factors beyond the claimant's control may have played a large part in failure of the claimant to quickly be available for the next inbound call during the calls that were monitored by her supervisor.

The question before the administrative law judge is not whether the employer has a right to discharge an employee for these reasons but whether the discharge is disqualifying under the provisions of the Employment Security Law. While the decision to terminate Ms. Beyer may have been a sound decision from a management viewpoint, the evidence in the record is not sufficient to establish intentional, willful misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated August 26, 2011, reference 01, is reversed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs