

improperly dispositioning a call on August 18, 2005. When the call ended the claimant dispositioned it as a 94 when it should have been marked as a 20. The claimant indicates that it was simply a mistake on his part and that he did not intentionally disposition the call. The claimant had been previously warned about erroneously dispositioning calls on June 7, 2005. The employer has a zero tolerance policy when it comes to the dispositioning of calls. No evidence exists to indicate the claimant intentionally marked the call in an incorrect manner. When calls are not dispositioned correctly it could cost the employer the account. The claimant performed the work to the best of his ability.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. Kelly v. IDJS, 386 N.W.2d 552 (Iowa App. 1986). Inasmuch as he did attempt to perform the job to the best of his ability but was unable to meet the employer's expectations, no intentional misconduct has been established, as is the employer's burden of proof. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Accordingly, no disqualification pursuant to Iowa Code Section 96.5-2-a is imposed. The employer may impose any reasonable lawful policy they so chose, but to impose a policy that prohibits any mistakes will not disqualify any employee from receiving unemployment insurance benefits when it is shown that an employee unintentionally made a mistake. An employer's policy is not dispositive of the issue of entitlement to unemployment insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible.

#### DECISION:

The September 26, 2005, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/s