

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

TYREL J SEBASTIAN
85 MANOR DR
ELDRIDGE IA 52748

APAC CUSTOMER SERVICES OF IOWA
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166 0283

Appeal Number: 05A-UI-07322-DWT
OC: 06/12/05 R: 04
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

APAC Customers Services of Iowa LLC (employer) appealed a representative's July 7, 2005 decision (reference 01) that concluded Tyrel J. Sebastian (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 2, 2005. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Turkesa Hill, the human resource coordinator, testified on the employer's behalf. David Williams, a representative with TALX, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 25, 2004. The claimant worked as a part-time telephone sales representative. Patty Neese was the claimant's supervisor.

In November 2004 and January 2005, the claimant took part in training the employer provided. Part of the employer's training includes employees learning the importance of reciting specific information at the end of a conversation with a potential customer. If employees do not recite the specified information, the federal government could impose a fine on the employer. The employer considers this information so critical that the first time an employee fails to recite this information, the employer gives the employee a first and final written warning. The second time the employee fails to recite the information, the employer discharges the employee.

On May 9, 2005, the claimant received his first and final written warning for failing to provide the required information to a potential customer. The claimant did not recite the information in early May because he believed the person had hung up the phone before the claimant had an opportunity to recite this information. Even if an employee thinks a person has hung up, the employer still requires the employee to recite the information because there are times a customer is still on the line.

On June 15, 2005, the claimant was finishing a call with a customer. When reviewing a tape of the call, the employer noticed the claimant paused instead of reciting the required information. When the claimant paused, the customer hung up and the claimant did not recite the required information. The employer discharged the claimant on June 15, 2005 because he did not recite the required information at the end of the call.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence

or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

In accordance with the employer's policy, the employer established compelling business reasons for discharging the claimant. The facts do not, however, establish that the claimant intentionally disregarded the employer's interests or that he was so negligent or careless when he worked that he committed work-connected misconduct. Since the claimant did not commit work-connected misconduct, he is qualified to receive unemployment insurance benefits.

DECISION:

The representative's July 7, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of June 12, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs