

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COLEEN J ESDOHR
Claimant

APPEAL NO. 06A-UI-10875-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN HOME SHIELD CORP
Employer

**OC: 10/15/06 R: 01
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Coleen J. Esdohr (claimant) appealed a representative's November 6, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of American Home Shield Corporation (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 28, 2006. The claimant participated in the hearing. Beth Crocker, a representative with TALX, appeared on the employer's behalf with Allison Ahlers, Connie Jannings, Sandy Hopper, and Deb Kulbel as witnesses and potential witnesses for the employer. During the hearing, Employer's Exhibits One, Two, Three and Four were offered and admitted as evidence. Based on the evidence, the arguments of the parties, 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 June 29, 1989. The claimant worked as a full-time renewal representative. Hopper was the claimant's most recent supervisor.

Although the claimant does not remember a final written warning, the employer gave her final written warning on June 15, 2004. The claimant received the warning after the employer discovered the claimant recorded in the employer's computer system that she had left messages or personally talked to customers or potential customers when she had not.

In early to mid-October 2006, the employer's global ranking indicated the claimant had an "A" ranking, which was above average. Even though the claimant's global ranking was above average, the employer gave the claimant a documented verbal warning on October 4, 2006, because the claimant needed to increase the amount of time she talked to customers on the phone.

On October 9, a California representative reported that a customer reported no one had recently talked to him about renewing his policy. When the representative looked on the computer system, it indicated the claimant had a recent conversation with this customer. After receiving this report, the employer audited the claimant's calls for October 9, 2006 and compared the claimant's report with the phone records. The employer discovered that between 4:00 and 5:00 p.m. this day, the claimant reported there were 42 calls where she had either talked to someone or left a message. The phone records, however, show the claimant had only nine calls connected during this time frame. The records did not match for this time period when there was no apparent discrepancy earlier in the day. The employer concluded it was impossible to talk to or leave messages for 42 contacts in an hour.

When the employer talked to the claimant, she had no explanation for the discrepancy. The claimant acknowledged it would have been impossible to talk to or leave 42 messages in an hour. When an employee records a contact with a consumer, the employee receives a commission when the consumer, on his own, renews a policy. If there is no contact information, the employee does not receive a commission.

Since the employer had previously talked to the claimant about this violation and there was no explanation as to how the records could be incorrect, the employer discharged the claimant on October 12, 2006, for falsifying business records.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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).

Even though the claimant denied falsifying any business records or inputting contacts into the computer she had not made, a preponderance of the evidence establishes the claimant committed work-connected misconduct on October 9 between 4:00 and 5:00 p.m. Therefore, as of October 15, 2006, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's November 6, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of October 15, 2006. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw