

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TODD C JOHNSON**  
Claimant

**GO DADDY SOFTWARE INC**  
Employer

**APPEAL 16A-UI-06010-DB-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 04/17/16**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the May 20, 2016, (reference 01) unemployment insurance decision that denied benefits based upon his discharge from employment for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on June 16, 2016. The claimant, Todd C. Johnson, participated personally. The employer, Go Daddy Software Inc., did not participate.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a hosting representative. He was employed from August 5, 2015 until April 19, 2016. This employer is a software company that hosts website domains. In his first position with the company he was a customer service representative. He became a hosting representative on February 15, 2016 and started working in that capacity on March 1, 2016. His job duties included helping customers over the telephone with hosting problems and trouble shooting. His immediate supervisor was Michael Redbeard.

The claimant was discharged for an incident that occurred on April 5, 2016. On that day claimant took a telephone call from a customer who had questions about accessing two of their accounts. Claimant made the appropriate change to an email address to effectuate access for this customer to the two accounts. However, claimant did not verify the pin number associated with the client accounts. During the call he realized that these two accounts were still owned by the developer and not the client. In this type of business it is common that a developer works with the client and keeps the account in the developer's name until they complete the development of the website. At that point, the account is transferred from the developer to the client.

Once claimant realized that this client was not the current owner of the two accounts, he immediately changed the email access back to the developer while he was still on the telephone with the client. No access to the accounts were ever granted to the client, however, the developer did receive an email which stated that the listed email address for these two accounts had been changed. This email was sent to the developer because it is automatically sent to the account owners when an email is changed. Upon receipt of this email, the developer called the employer and questioned why the email listed on the account had been changed.

Claimant reported that he had changed the email and had forgotten to verify the pin number prior to making the change. Claimant also reported that he noticed this error while he was on the telephone with the client and immediately changed the email listed back and no access was ever granted to the caller. The employer discharged claimant based upon this incident.

There was no written or verbal policy requiring claimant to verify a pin number when the caller called in to request assistance. No requirement of verifying a pin number was discussed during claimant's two-week training for this new position. When claimant had worked as a customer service representative the computer automatically required him to enter a pin number prior to allowing access. When claimant transferred to the hosting department, this prompt did not exist on their computer system and access was immediately granted without verifying a pin number from the caller. Claimant had previously verified caller pin numbers out of caution because this is how he was used to accessing the system as a customer service representative.

Claimant had previously received a written warning for failing to complete the sales and service process with a telephone caller when he was in the customer service department. He had never been warned or disciplined regarding verification issues of a caller. Claimant did not intentionally change the email address to a non-account holder but rather made a mistake in failing to verify the pin number prior to changing the email listed. The caller had other identifying information regarding the accounts which claimant used prior to changing the email.

#### **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. Benefits are allowed.

As a preliminary matter, I find that Claimant did not quit. Claimant was discharged from employment.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. 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 on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

In this case the claimant did not intentionally fail to request the pin number for verification of the caller. He used other methods to verify the caller. He was never instructed, verbally or in writing, that he needed to verify the pin number of a caller for this hosting representative position. In fact, there was no auto prompt requiring claimant to enter a pin number prior to accessing account information.

The employer presented no testimony or exhibits that claimant acted in violation of any policy or procedure. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). Mindful of the ruling in *Crosser*, and noting that the claimant presented direct, first-hand testimony while the employer presented no evidence, the administrative law judge concludes that it is permissible to infer that the employer's testimony was not provided because it would not have been supportive of its position. See *Id.*

Claimant's behavior does not rise to the level of misconduct. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). There is no evidence that the claimant's actions had any wrongful intent.

A claimant's poor work performance does not disqualify him from receiving benefits. Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986).

Employer has failed to prove that claimant was discharged for job-related misconduct that would disqualify him from receiving benefits. Benefits are allowed.

**DECISION:**

The May 20, 2016, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Dawn R. Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/pjs