

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY J GREGG
Claimant

APPEAL NO. 12A-UI-12225-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOCUS SERVICES LLC
Employer

OC: 09/16/12
Claimant: Respondent (2R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Focus Services LLC filed a timely appeal from a representative's decision dated October 4, 2012, reference 01, which held claimant eligible to receive unemployment benefits. After due notice was provided, a hearing was scheduled for and held on November 6, 2012. Claimant participated. The employer participated by Ms. Jennifer Roseland, Regional Recruiter.

ISSUE:

The issue in this matter is whether the claimant was discharged under disqualifying conditions.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Amy Gregg was employed by Focus Services LLC from October 2007 until September 17, 2012 when she was discharged. Ms. Gregg was employed as a part-time telephone sales representative and was paid by the hour.

Ms. Gregg was discharged after the employer concluded by monitoring calls that Ms. Gregg was avoiding inbound calls by intentionally delaying call transfer. The claimant's failure to promptly transfer calls for up to four minutes caused Ms. Gregg to be unavailable to take waiting inbound calls. The employer believed that the claimant's conduct not only slowed service but jeopardized its contractual arrangements with clients who were using the company for their telephone sales.

Because Ms. Gregg had been specifically warned in the past for the same violation on August 30, 2012, a decision was made to terminate Ms. Gregg because the same conduct was occurring again.

It is the claimant's belief that she was not intentionally delaying the transferring of calls.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code section 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 section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. 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. App. 1992).

In this matter the evidence in the record establishes that Ms. Gregg had been specifically warned for call avoidance on August 30, 2012. The claimant had engaged at that time in unjustifiably delaying the transfer of calls making herself unavailable to receive additional calls that were waiting in queue. The claimant was discharged when her calls were again monitored and it was determined that the claimant was again "sitting on calls" by delaying the transfer for up to four minutes for no justifiable reason.

The claimant's conduct in intentionally avoiding calls after being specifically warned showed a willful disregard for the employer's interests and reasonable standards of behavior that the employer had a right to expect of employees under the provision of the Employment Security Law. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated October 4, 2012, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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