

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN A FELTS**  
Claimant

**APPEAL NO. 07A-UI-07080-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APAC CUSTOMER SERVICES  
OF IOWA LLC**  
Employer

**OC: 06/17/07 R: 04  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from a decision of representative dated July 10, 2007, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 6, 2007. The claimant participated. The employer participated by Turkessa Newsen.

**ISSUE:**

At issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from July 26, 2004, until June 13, 2007, when he was discharged from employment. Mr. Felts held the position of full-time customer service representative and was paid by the hour. The claimant was discharged when the employer believed that the claimant had engaged in “call avoidance” by improperly using an “after call work” button to avoid incoming calls. Mr. Felts had been warned in the past for a form of call avoidance and was aware of the company policies. At the time that the company began to investigate the matter, Mr. Felts was not informed of the reason for the investigation and was not given a specific reason for his discharge.

Mr. Felts denies excessively or inappropriately using the after call work button but utilized that button only occasionally to take a momentary break from work. The claimant did not intend to violate the company’s call avoidance policy by doing so.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes, based upon the evidence in the record, that employer has not sustained its burden of proof in establishing intentional disqualifying misconduct on the part of Mr. Felts at the time of his discharge. The record establishes that the claimant was

discharged because the employer believed that the claimant may have been attempting to avoid incoming calls in violation of company policy. The employer's witness testified that it was her understanding that the results of a tracking report investigation showed what the trackers believed to be a pattern of call avoidance in violation of company policy. Mr. Felts participated personally and provided firsthand sworn testimony denying intentionally avoiding calls and testified that he was unaware that any conduct on his part would be considered a violation of policy. The claimant was not informed of the allegations against him when the matter was being investigated and was not informed specifically of the basis for his termination. While hearsay evidence is admissible in administrative proceedings, it cannot be accorded the same weight as sworn direct testimony. The administrative law judge finds the claimant to be a credible witness and finds that his testimony is not inherently improbable. As the evidence does not establish the claimant intentionally violated company policy, the administrative law judge concludes that the claimant's discharge from employment was under non-disqualifying circumstances.

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.

**DECISION:**

The representative's decision dated July 10, 2007, reference 01, is affirmed. The claimant was separated under non-disqualifying conditions and is eligible for unemployment insurance benefits, provided that he meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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