IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

MICHAEL C ANDERSEN Claimant **AMERICAN HOME SHIELD CORP** Employer	**APPEAL 16A-UI-06192-LJ-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 05/08/16** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 26, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from work for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on June 20, 2016. The claimant, Michael C. Andersen, participated, and was represented by Amanda James, attorney at law. Witness Kimberly Andersen also testified on claimant's behalf. The employer, American Home Shield Corporation, participated through Amy Platt, human resource manager; Jeri Harbaugh, authorization supervisor; and Brett Foley, authorization manager; and Thomas Kuiper of Equifax/Talx represented the employer. Exhibits 1 through 5 were received and admitted into the record without objection.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an authorizer from May 1, 2007, until this employment ended on April 7, 2016, when he was discharged for disconnecting two incoming calls.

On March 31, 2016, Harbaugh was notified by the QA department that claimant had disconnected two calls: one on March 11, and one on March 30. Harbaugh reviewed the call detail report and confirmed that claimant, and not the customer, had disconnected the call. (Exhibit 2, page 3) While Harbaugh reviewed the call recording and was not able to determine if claimant disconnected the call, Brook Cairncross in QA informed her that its report attributed the disconnection to claimant. (Exhibit 2, pages 4-5) Neither call had a note indicating it was accidentally disconnected.

The employer maintains the "AHS Call Center Associate Standards for Phone Excellence" (the "Call Policy"). (Exhibit 1) According to the Call Policy, disconnecting a call on a customer is call abandonment. (Exhibit 1, page 2) Violations of the Call Policy may lead to corrective action "up

to and including termination." (Exhibit 1, page 1) If a call is accidentally disconnected, the employee should document this in the system. Claimant could not recall any recent training on the Call Policy.

Claimant denies intentionally disconnecting either of the calls at issue. He explained that he was having computer issues around the time of these calls, and he believes he may have failed to document the accidental disconnections because he was not able to get into the system. Claimant received training on the Call Policy on February 24, 2010. (Exhibits 1, 3) Claimant had never received any prior disciplinary action for violating the Call Policy during his employment. Claimant was not aware his job was in jeopardy or he could lose his job at the time of his discharge.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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.
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> 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).

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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.*. In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id*.

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant credibly testified that the March 11 and March 30 calls may have been disconnected accidentally. Of the three employer witnesses, only Harbaugh reviewed the two calls, and she was not able to determine if claimant intentionally ended the calls. The employer did not provide recordings of the calls or indicate anything about the two disconnections showed claimant intentionally ended them.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning.

Here, the conduct for which claimant was discharged was merely an isolated mistake. The evidence in the records shows he was last trained on the employer's Call Policy in 2010. He was never warned for violating the policy, and he had no opportunity to correct his behavior or fix his mistakes. The employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

DECISION:

The May 26, 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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Elizabeth Johnson
Administrative Law Judge

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Decision Dated and Mailed

lj/pjs