

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALTA C MURPHY
Claimant

APPEAL NO. 13A-UI-03598-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARKETLINK INC
Employer

OC: 02/24/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 18, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 26, 2013. The claimant did participate. The employer did participate through (representative) Shawn Nagle, Recruitment Specialist; Larry Schultz, Site Manager; and Stephanie Young, Supervisor.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed at Marketlink, Inc. as a telephone sales representative full time beginning on June 12, 2012 through February 22, 2013 when she was discharged. The claimant was pacing on the sales floor talking loudly on her cell phone using profanity, including the “f-word,” “bullshit” and “hell.” Both the employer’s witnesses directly heard the claimant use profanity while on the cell phone on the sales floor. Mr. Schultz escorted the claimant from the sales floor to the break room because she was talking so loudly and swearing so loudly to the point where her language could be overheard by customers and other employees. The employer’s policies, a copy of which had been given to the claimant provide a zero tolerance for profanity at the workplace.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The employer's evidence establishes that the claimant did use profanity on the sales floor and disrupted other sales associates in their work. She knew or should have known that using profanity on the sales floor was not allowed. The administrative law judge is persuaded by the employer's first hand witnesses Ms. Nagle and Mr. Schultz that the claimant did swear on the sales floor while talking on her cell phone. Her conduct rises to the level of disqualifying job-related misconduct. Benefits are denied.

DECISION:

The March 18, 2013 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/tll