

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CURTIS J ASWEGAN

Claimant

APPEAL NO. 07A-UI-01566-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACCESS DIRECT TELEMARKETING INC

Employer

**OC: 08-06-06 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 8, 2007, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on February 28, 2007. The claimant did participate. The employer did participate through Jason Tylee, Program Manager, and Rich Brecht, Center Manager, and was represented by Alyce Smolsky of TALX UC eXpress. Employer's Exhibit One was received. Claimant's Exhibit A was received.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a telephone sales representative full time beginning May 7, 2001 through January 4, 2007, when he was discharged.

The claimant was discharged when the employer learned that he had failed to answer a customer call on January 4, 2007. The claimant's line dialed out to the customer he was calling and the monitor noted that the customer answered the phone and the claimant failed to say anything and the customer eventually hung up. The claimant's actions constituted a dropped call. Dropped calls can cost the employer a client's account. On December 29, 2006, the claimant was given a final written warning for the exact same situation, that is, dropping a call. At that time, the claimant was warned that another infraction could result in his termination. The claimant knew that he was not to drop calls.

The claimant alleges that he was interrupted by a coworker who was trying to talk to him. The claimant could have just ignored the coworker, there was no requirement that he speak to the coworker. Or the claimant could have logged himself off the system so that calls would not occur.

The claimant provided information at the hearing that he was being treated for bipolar affective disorder since 1993, including taking medication. At no time prior to his discharge did the

claimant ever ask his employer to accommodate any medical restrictions or needs. The claimant was able to adequately perform his job for years while being treated for bipolar disease. The medical information does not indicate that the claimant would need any accommodation. The claimant never mentioned anything to his employer about any special needs until the unemployment compensation hearing.

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.

The claimant had been given fair warning that any more dropped calls could result in his discharge. The claimant did not have to chat with a coworker who wanted to talk to him, he could have continued working on the call or taken himself off-line to talk with a coworker. The claimant's treatment for bipolar disorder is not an excuse for dropped calls. Prior to his discharge the claimant had an obligation to ask his employer for any accommodation he may have required. He did not do so. The administrative law judge concludes that the claimant is bringing up his bipolar disorder only in an attempt to justify his claim for unemployment insurance benefits. The claimant's actions constitute disqualifying misconduct. Benefits are denied.

DECISION:

The February 8, 2007, reference 02, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw