

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Stephen Camp was employed by GEICO as a full-time sales counselor from March 30, 1998 until August 30, 2005, when Supervisor Rachel Ball discharged him for poor job performance.

Mr. Camp's duties involved over-the-phone insurance sales. Each month, GEICO randomly monitored up to 8 of Mr. Camp's 131 to 180 sales calls for quality. Calls in which Mr. Camp was efficient, effective, demonstrated quality and in which Mr. Camp asked the prospective customer for the sale had a chance of being deemed "A-calls." However, the checklist for an A-call included 67 factors. GEICO expected 80 percent of each sales counselor's monitored calls to earn an A-call rating. This quality control monitoring was separate from GEICO's measurement of Mr. Camp's actual sales. Mr. Camp's sales were reasonably consistent month to month. The employer did not base the decision to discharge Mr. Camp on his actual sales.

Mr. Camp's A-call rating in October 2004 was 14.3 percent. On November 3, 2004, Supervisor Brett Heiserman counseled Mr. Camp regarding his A-call percentage and indicated that the employer expected Mr. Camp to increase his A-call percentage to 60 percent. For November, Mr. Camp's A-call percentage was 16.7 percent. On December 12, Mr. Heiserman counseled Mr. Camp that he needed to raise the percentage of A-calls to 80 percent. Mr. Camp's A-call percentage for December was 20 percent. On January 19, 2005, Mr. Heiserman placed Mr. Camp on a Performance Improvement Plan. The performance improvement plan required Mr. Camp to achieve a 40 percent A-call rating in February, a 50 percent A-call rating in March, a 60 percent A-call rating in April, and an 80 percent A-call rating thereafter. Mr. Camp's continued employment was in jeopardy if he failed to meet the expectations set forth in the Performance Improvement Plan. Mr. Camp achieved a 50 percent rating in February and March and received a 16.7 percent (one call out six) A-call rating in April. Because Mr. Camp had shown "nice improvement" during February and March, Mr. Heiserman extended the Performance Improvement Plan and the 60 percent A-call goal through May. On May 4, Mr. Heiserman discussed with Mr. Camp the fact that Mr. Camp had failed to "ask for the sale" during a monitored telephone call and instructed Mr. Camp that he needed to ask for the sale during each call and close the sale during the first call with the prospective customer. Mr. Camp asked for a copy of the monitor's checklists for the monitored calls, but the employer refused to provide these. The employer cited its policy of wanting the supervisors to devise the appropriate coaching strategy rather than allowing access to the monitoring checklists completed during the actual monitoring of the call. In May, Mr. Camp's A-call rating was zero percent. On May 31, Mr. Heiserman and Rachel Ball issued a formal warning to Mr. Camp and advised Mr. Camp that he would need to demonstrate a 50 percent A-call rating in June, a 60 percent A-call rating in July, and 80 percent thereafter. The warning indicated that Mr. Camp would be subject to further discipline up to and including discharge if he failed to meet the A-call goals. On June 21, Mr. Camp's new supervisor, Terry Vaske, advised Mr. Camp that Mr. Camp would be subject to discharge if he failed to meet the A-call percentage goal for June and would not, in fact, have until the end of July to come into compliance with the A-call goals. It is not clear whether Mr. Camp met the A-call goal for June. Nonetheless, Mr. Camp's employment continued. In July, Mr. Camp's A-call percentage was 57 percent (5 out of 7 calls). On August 9, Supervisor Jay Lapierre advised Mr. Camp that the Performance Improvement Plan would be extended through August "due to his slight improvement in July." Mr. Lapierre further advised that there would be no more extensions if Mr. Camp failed to meet the 60 percent A-call goal for August. On August 31, the employer discharged Mr. Camp for failing to meet the 60 percent A-call goal. Mr. Camp's A-call rating for August was 55 percent (5 of 9 calls). Prior to August 29, Mr. Camp's A-call rating for August was 71 percent (5 of 7 calls). On August 29,

Mr. Camp was “randomly” monitored twice and his A-call percentage dropped from 71 to 55 percent.

At all relevant times, Mr. Camp put forth consistent effort and was working to the best of his ability. Mr. Camp’s sales for the most recent quarter were such that he qualified for a bonus. Mr. Camp had consulted his doctor about his decreased A-call rating and the doctor had advised Mr. Camp that stress was interfering with his performance.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Camp was discharged for misconduct in connection with his employment. It does not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Since the claimant was discharged, 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 benefits. Misconduct serious enough to warrant the discharge of an employee

is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). 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).

The evidence in the record establishes that the sole basis for Mr. Camp's discharge was his failure to meet a particular quality assessment goal, despite consistent effort and reasonably consistent sales. The alleged unsatisfactory performance was not misconduct for purposes of determining Mr. Camp's eligibility for unemployment insurance benefits. See 871 IAC 24.32(1)(a). The evidence fails to establish any negligence, carelessness, or misconduct on Mr. Camp's part. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Camp was discharged for no disqualifying reason. Mr. Camp is eligible for benefits, provided he is otherwise eligible. The employer's account may be assessed for benefits paid to Mr. Camp.

DECISION:

The Agency representative's decision dated September 26, 2005, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be assessed for benefits paid to the claimant.

jt/kjw