

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT A LOFTIS
Claimant

APPEAL NO. 13A-UI-14241-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THOMAS L CARDELLA & ASSOCIATES INC
Employer

**OC: 01/13/13
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Thomas L. Cardella & Associates (employer) appealed a representative's December 20, 2013, decision (reference 02) that concluded Robert Loftis (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 21, 2014. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer was represented by Barbara Toney, Unemployment Hearings Coordinator, and participated by Jason Tylee, Center Director.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 19, 2013, as a full-time customer care agent. Employees receive the employer's policies and procedures upon hire. The employer issued the claimant twelve written warnings for failure to follow instructions involving objection handling or membership offering. The employer notified the claimant that further infractions could result in termination from employment. On November 22, 2013, the claimant did not offer a membership product to a customer during a call. The employer terminated the claimant on November 25, 2013.

The claimant filed for unemployment insurance benefits with an effective date of January 13, 2013. The claimant did not receive any unemployment insurance benefits after his separation from employment. On December 19, 2013, the fact finder called the employer twenty minutes early. The fact finder left a message for the employer and the employer, Jason Tylee, immediately returned the call. The fact finder did not return the employer's call.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for 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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's December 20, 2013, decision (reference 02) is reversed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided

the claimant is otherwise eligible. The claimant did not receive any unemployment insurance benefits after his separation from employment.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css