

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUSTIN A SAIZ
Claimant

APPEAL NO. 07A-UI-05211-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE CBE GROUP INC
Employer

**OC: 04/22/07 R: 02
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Justin Saiz, filed an appeal from a decision dated May 10, 2007, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 6, 2007. The claimant participated on his own behalf. The employer, CBE, participated by Senior Director of Operations Ken Braddock and Human Resources Supervisor Candace Daniels. Jenny Blythe observed the proceedings but did not offer testimony. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Justin Saiz was employed by CBE from January 10, 2005 until April 30, 2007. At the time of separation he was a full-time supervisor in the phone debt collection department. The conduct of the debt collectors is strictly governed by CBE policies and the Fair Debt Collections Act (FDCA). The collectors are trained in these provisions at the time of hire and every six months there are refresher courses given and tests which must be passed to maintain certification.

The claimant had been informally counseled by supervisors whenever there was a complaint from a debtor. Mr. Saiz did not receive any formal disciplinary action because it was determined his conduct did not violate policy or the FDCA, but the supervisors did take the opportunity to discuss the complaint and use it as a learning opportunity on how to do things better.

On April 24, 2007, Senior Director of Operations Ken Braddock received a referral from the corporate compliance office regarding the claimant's conduct on an April 18, 2007, call. Mr. Braddock listened to the recording of the call and, at the request of the corporate office, listened to other calls after that for any further problems. He discovered a call received on April 21, 2007, which was an egregious violation of the policies. The claimant had taken a call from one of his subordinates and in his conversation with the debtor, used a demeaning and harassing tone. He told the debtor he was "screwed" and telling him he sounded "like Goofy,

yuka, yuka, yuka.” In addition he said “you are not a wealthy man,” and telling him to “stop flapping [his] gums.” There were other inappropriate comments and at the end of the conversation Mr. Saiz asked the person to get a piece of paper and a pen, and when he said he was ready, the claimant said, “get off my phone, debtor,” and hung up. Under the FDCA and CBE policies, a collector is not even allowed to refer to the person as a debtor.

Mr. Braddock conferred with the human resources department and the corporate attorney. The decision was made to discharge the claimant. Mr. Saiz was given the opportunity to listen to the recordings and when he did, he maintained he had not done anything wrong, that this was usual and normal way of dealing with debtors. The employer felt it was a violation of law and policy and damaging to its image, and the claimant was discharged by Mr. Braddock.

REASONING AND CONCLUSIONS OF LAW:

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 received adequate training and refresher courses in the proper way to interact with the people being contacted regarding debt. The administrative law judge cannot agree with Mr. Saiz that his conduct on the calls in question were appropriate, usual and normal under the employer's policies and the applicable law. He was demeaning and condescending, mocking and ridiculing the individual on the phone with him. This is not acceptable conduct and exposed the employer, as well as himself, to legal liabilities. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of May 10, 2007, reference 01, is affirmed. Justin Saiz is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css