

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

GERRY L DIXON  
512 PINE ST  
WATERLOO IA 50703

APAC CUSTOMER SERVICES INC  
c/o TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-02335-HT  
OC: 01/16/05 R: 03  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant, Gerry Dixon, filed an appeal from a decision dated March 3, 2005, reference 03. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on March 23, 2005. The claimant participated on his own behalf. The employer, APAC, participated by Senior Recruiter Abraham Funchess and Regional Human Resources Manager Julie Fitzpatrick. Exhibit One was admitted into the record.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Gerry Dixon was employed by APAC from January 26 until December 7, 2004. He was a full-time customer service representative.

On October 29, 2004, the claimant received a "first and final" warning for violation of company policy. He was advised he could be discharged for any further violations of company policies, procedures, or standards of conduct. Mr. Dixon was being monitored on December 7, 2004, by Team Leader Sara Mullesch. During the monitoring the claimant "released" three calls. This means he disconnected the call before the customer did. This is a violation of company policy and could lead to the employer's client withdrawing its business from APAC and compromising the employer's business reputation.

Ms. Mullesch consulted with Operations Manager Brain McLaury and they reviewed the computer generated report from the monitoring session which confirmed the disconnects. His personnel file was reviewed and the "first and final" warning. The decision was made to discharge him and he was informed by Ms. Mullesch and Mr. McLaury that afternoon.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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).

The claimant had been advised his job was in jeopardy as a result of his failure to follow procedure. In spite of the warning he disconnected several calls in a row without speaking to the customer. This caused a loss of that customer's business, as well as the potential loss of the client for violation of the rules. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of March 3, 2005, reference 03, is affirmed. Gerry Dixon is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

bgh/tjc