

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOE G PRIVETTA
Claimant

APPEAL NO. 09A-UI-05852-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACCESS DIRECT TELEMARKETING INC
Employer

OC: 03/22/09
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Access Direct Telemarketing, Inc. filed an appeal from a representative's decision dated April 8, 2009, reference 01, which held that no disqualification would be imposed regarding Joe Privetta's separation from employment. After due notice was issued, a hearing was held by telephone on May 12, 2009. Mr. Privetta participated personally. The employer participated by Nicole Hrabak, Human Resources Recruiter, and Bryan Branscomb, Operations Manager.

ISSUE:

At issue in this matter is whether Mr. Privetta was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Privetta was employed by Access Direct Telemarketing, Inc. from September 2, 2008 until March 13, 2009. He worked full time as a marketing sales representative. He was discharged for not answering a customer call on March 13.

The employer's inbound calls are automatically routed to the next available sales representative. The representative is made aware of an incoming call by a beep in the headset and a prompt on the computer monitor. The phone system is equipped with a "flash" function that allows an individual to take himself out of rotation and go to the end of the line to receive inbound calls. If the "flash" button is hit while a call is coming in, it has the effect of disconnecting the call. Representatives had been told not to use the "flash" button. The call Mr. Privetta did not answer on March 13 was being monitored. Because of his failure to answer the call, he was discharged the same day. He did not have any history of not answering calls routed to him.

The only warning Mr. Privetta had received was on February 4 when he was rude to a customer. It was an "escalated" call where the customer had asked to speak to a supervisor because of an issue involving a refund. The call was then turned over to Mr. Privetta.

Mr. Privetta used a tone of voice that was considered condescending and abrupt. The record does not disclose any other complaints of a similar nature.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer's burden included establishing that the discharge was prompted by conduct that constituted misconduct within the meaning of the law. See 871 IAC 24.32(8). In the case at hand, Mr. Privetta's discharge was triggered by the fact that he failed to answer a call on March 13.

The administrative law judge cannot conclude that Mr. Privetta deliberately or intentionally failed to answer the call. Although he used the "flash" button, it cannot be determined that he knew a caller was on the line when he did so. The administrative law judge appreciates that employees had been told not to use the "flash" button. However, Mr. Privetta did not have a history of using the button or of avoiding work. The administrative law judge is inclined to view his conduct as a minor peccadillo and not deliberate misconduct.

Since Mr. Privetta did not engage in misconduct on March 13, the administrative law judge is not free to consider other, past acts that might constitute misconduct. Based on the evidence of record it is concluded that substantial misconduct has not been established. As such, no disqualification is imposed.

DECISION:

The representative's decision dated April 8, 2009, reference 01, is hereby affirmed. Mr. Privetta was discharged but substantial misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css