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

DAWN R PETERSON
1943 HIGHWAY 103
WEST POINT IA 52656

ACCESS DIRECT TELEMARKETING INC
C/O TALX – JOHNSON & ASSOC
PO BOX 6007
OMAHA NE 68106 0007

Appeal Number: 05A-UI-00264-DWT
OC: 12/05/04 R: 04
Claimant: Respondent (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, 4th 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:

Access Direct Telemarketing, Inc. (employer) appealed a representative's December 30, 2004 decision (reference 01) that concluded Dawn R. Peterson (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 27, 2005. The claimant participated in the hearing. Suzanna Ettrich, attorney at law, represented the employer. Spring Bergheger, the program manager, appeared on the employer's behalf. During the hearing, Employer's Exhibits One and Two were offered and admitted as evidence.

FINDINGS OF FACT:

The clamant started working for the employer on August 4, 2003. She worked as a full-time telephone sales representative. The claimant understood the employer had a zero tolerance policy for failing to disposition a call correctly.

The claimant started working on a new program in September 2004. Although the claimant received training that she was required to key into the computer system when a potential customer was to be called back, the claimant forgot to key in this information. On Sepetmber14, 2004, the claimant received a final written warning for violating the employer's policy for this particular program. (Employer's Exhibit Two) The employer transferred the claimant to another program shortly after September 14, 2004.

On December 7 or 8, a quality assurance employee monitored some of the claimant's calls. One call the claimant called back a lead, the lead indicated she was not interested in the product the claimant was selling. The claimant appropriately ended the call. While the claimant was entering into the computer the result of the call, she was talking to her supervisor. The claimant inadvertently entered the call as a sale instead of a refusal. A screen that normally pops up to verify a sale did not pop up on this call. The claimant immediately realized she entered the call incorrectly and reported this to her supervisor. The disposition of the call could not be changed. The claimant's supervisor told her to be more careful. The quality assurance monitor heard the claimant's phone conversation and watched the same screens the claimant had on the computer she used. The quality assurance monitor reported that the claimant failed to accurately record the disposition of this call. The employer had no knowledge that the claimant reported to anyone that she had incorrectly recorded this call as a sale instead of a refusal.

On December 7 or 8, the employer discharged the claimant because the employer has zero tolerance for failing to correctly record the disposition of calls. The claimant did not present her side of the incident to Ron Dick, the manager, because she did not get along with him.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in

isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant's testimony is credible and must be given more weight than the employer's testimony. The employer's testimony is based on hearsay information from witnesses who did not participate in the hearing. The employer's witness did not have any personal knowledge about the December incident. A preponderance of the evidence indicates the claimant inadvertently made a mistake when she keyed in the disposition of a December 7 or 8 call. As soon as she realized what she had done, the claimant reported her mistake to her immediate supervisor. A quality assurance monitor did not know the claimant reported her mistake and concluded the claimant intentionally reported the results of a call as a sale instead of a refusal.

Based on the employer's zero tolerance policy for such mistakes, the employer established compelling business reasons for discharging the claimant. The claimant, however, did not intentionally misreport the results of the call and she did not substantially disregard the employer's interests. The claimant did not commit work-connected misconduct. As of December 5, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's December 30, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of December 5, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/b