

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

EDWARD S HATCHER
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CEDAR RAPIDS IA 52406

ACCESS DIRECT TELEMARKETING INC
c/o TALX UC EXPRESS
PO BOX 6007
OMAHA NE 68106-0007

Appeal Number: 06A-UI-04547-DWT
OC: 04/02/06 R: 03
Claimant: Appellant (2)

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:

Edward S. Hatcher (claimant) appealed a representative's April 25, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Access Direct Telemarketing, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 11, 2006. The claimant participated in the hearing. Jessica Meyer, a representative with TALX, appeared on the employer's behalf with Joe Dunnwald, the program manager, and Rich Brecht as witnesses. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 10, 2004. The claimant worked as a customer service representative. Philip Bachman was the claimant's supervisor.

During his employment, the employer coached the claimant for using slang when talking to customers, for saying to many "uhs" and "ums" and for using inappropriate grammar. The claimant was on his final warning for attendance issues.

On April 6, 2006, the claimant had been talking to a customer for about 30 minutes while making a sale. During this sale, one of the managers shouted information to the telemarketers. The customer asked about the shouting she heard from the claimant's phone. The claimant explained and made the comment that when he got off the phone to ask what had been announced, the supervisor would not know. When Dunnwald heard the claimant make this comment, he made the comment that the claimant better not be talking to a customer. The claimant then commented that his supervisor was giving him the evil eye. Dunnwald found both comments inappropriate and immediately suspended the claimant. The employer discharged the claimant on April 6 for making an inappropriate and unprofessional comment to a customer.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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).

While the employer had talked to the claimant about using slang and inappropriate grammar while talking to customers on the phone, the employer had not previously noticed any problems with the claimant making inappropriate remarks about the employer's management. The facts show the customer initiated the subject matter when she asked the claimant what the yelling was all about at his workplace. While the claimant's comment that the supervisor would not

remember what he had said earlier was not appropriate, the facts do not establish that the claimant intentionally disregarded the employer's interests when he made this comment. The claimant used poor judgment when he made this comment and the comment about getting an evil eye from his supervisor. These isolated comments on April 6 do not rise to the level of work-connected misconduct.

The employer established business reasons for discharging the claimant. The reason for the discharge does not constitute work-connected misconduct. Therefore, as of April 2, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 25, 2006 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of April 2, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs