

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

WILLIAM R RENNECKAR
2228 DEER RUN NE
NORTH LIBERTY IA 52317

ACCESS DIRECT TELEMARKETING INC
c/o JOHNSON AND ASSOCIATES
PO BOX 6007
OMAHA NE 68106-0007

Appeal Number: 04A-UI-07829-HT
OC: 06/20/04 R: 03
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:

The employer, Access Direct, filed an appeal from a decision dated July 15, 2004, reference 01. The decision allowed benefits to the claimant, William Renneckar. After due notice was issued, a hearing was held by telephone conference call on August 11, 2004. The claimant participated on his own behalf. The employer participated by General Manager Heather Campbell and Quality Assurance Supervisor Katie Collier. The employer was represented by Johnson and Associates in the person of Susanna Ettrich. A proposed exhibit of a copy of taped call by the claimant was submitted to the Appeals Section by overnight mail the day before the scheduled hearing. The administrative law judge, working at a remote location, did not receive a copy of the recording in time for the hearing.

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: William Renneckar was employed by Access Direct from January 29, 1998 until June 24, 2004. He was a full-time TSR.

On June 23, 2004, the claimant handled an in-coming call from a potential customer. It was a prolonged exchange because the customer was somewhat confused, believing he had called the customer service line for AT&T, but had reached an Access Direct TSR who was attempting to sell him a form of bill-protection. The customer did evidence "buying signs," which means he appeared interested in the product or service and the claimant continued the selling dialogue. He needed a "firm" acceptance of the offer and did have to repeat the question more than once to get the firm answer required.

After the record was closed the employer submitted a request to hold open the record to enable the administrative law judge to listen to the recording of the hearing. The request was not made while the record was still open to allow the judge to rule on it or allow the claimant to object. The employer's representative indicated she had no objection to closing the record and ended the hearing at 1:31 p.m. when the judge asked if there were any objections.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is not.

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 employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). In the present case, the employer did not provide any firm evidence the claimant was guilty of inappropriate selling techniques, rudeness or unprofessional behavior. He had no prior warnings or disciplinary actions during his six years of employment to indicate this was a recurring problem about which he had been warned. The administrative law judge concludes the employer failed to meet its burden of proof and disqualification may not be imposed.

The employer's request to hold open the record is denied. No request to do so was made at the time the hearing was being held and no objection was made to closing the record. The employer's exhibit was not able to be reviewed by the administrative law judge because it was not submitted in a timely manner. The notice of the hearing specifically notifies parties to immediately send in any documents or exhibits it wishes to have the judge consider. The employer did not do this.

DECISION:

The representative's decision of July 15, 2004, reference 01, is affirmed. William Renneckar is qualified for benefits provided he is otherwise eligible.

bgh/kjf