

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FLORITA A GARCIA
Claimant

APPEAL NO: 07A-UI-07555-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACCESS DIRECT TELEMARKETING INC
Employer

OC: 07/01/07 R: 02
Claimant: Respondent (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Access Direct Telemarketing, inc. (employer) appealed a representative's July 27, 2007 decision (reference 01) that concluded Florita A. Garcia (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 August 22, 2007. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which she could be contacted to participate in the hearing. As a result, no one represented the claimant. Alyce Smolksy, a representative with TALX, appeared on the employer's behalf, with Corey Samuelson testifying on the employer's behalf. During the hearing, Employer Exhibits One through Five were offered and admitted as evidence. Based on the evidence, the arguments of the employer, 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 March 14, 2005. The claimant worked as a full-time outbound telemarketer. Dan Garcia supervised the claimant.

During the course of her employment, the employer repeatedly reminded the claimant employees were not allowed to have a cell phone on when they were on the floor. (Employer Exhibit Three.) The claimant had a bad habit of taking her cell phone with on the floor and then using it sometime during the day. (Employer Exhibits One and Two.) In January 2007, the employer's management started to strictly enforce the employer's cell phone policy. As a result of strictly enforcing the cell phone policy, the employer suggested that the claimant leave her cell phone in Samuels's office or another office when she was working on the floor. The claimant left her cell phone in a manager's office a number of times.

On July 2, 2007, Samuels saw the claimant with her cell phone on the floor. He reminded her that she could not have her cell phone on the floor with her. The next day as Samuels talked to the

claimant about an issue, she told Samuels she had her cell phone with on the floor because she had been expecting a call on her cell phone about her sick child.

On July 3, 2007, the employer discharged the claimant because she repeatedly failed to follow the employer's cell phone policy and had her cell phone turned on when she worked. The claimant has not filed any weekly claims.

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 section 96.5-2-a. 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 knew or should have known the employer did not allow any employee to have a cell phone turned on while working. The employer repeatedly told the claimant she could not have her cell phone on the floor. The employer had a procedure in place for employees to receive emergency phone calls when they worked. The claimant knew that in 2007 the employer had strictly enforced the cell phone rules. Even though the claimant knew it was a violation to have her cell phone turned on when she worked, the claimant had her cell phone turned on while she worked on July 2 and 3. The claimant knowingly violated the employer's cell phone policy. The claimant's intentional failure to follow the employer's rules amounts to a substantial disregard of the employer's interests. The employer discharged the claimant for reasons constituting work-connected misconduct. As of July 1, 2007, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's July 27, 2007 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of July 1, 2007. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs