

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

DEREK A ROBINSON
4017 – 20TH AVE SW #5
CEDAR RAPIDS IA 52404

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

Appeal Number: 05A-UI-02973-JTT
OC: 02/06/05-04 R: 03
Claimant: Appellant (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 for Misconduct

STATEMENT OF THE CASE:

Derek Robinson filed a timely appeal from the March 8, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 8, 2005. Mr. Robinson participated in the hearing. Suzanna Ettrich of Johnson & Associates/TALX UC Express represented the employer and presented testimony through witness Ryan French. Exhibits One through Seven were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Derek Robinson was employed by Access Direct as a full-time telephone sales representative (TSR) from September 16, 2002 until February 1, 2005, when his immediate supervisor, John Ostenhaus, discharged him for misconduct.

The final incident that prompted Mr. Robinson's discharge occurred on February 1, 2005. On that date, Mr. Robinson hung up on a customer who had called to cancel a credit card protection feature. The call went as follows: The customer indicated his desire to cancel the feature. Mr. Robinson responded with a sales pitch in attempt to convince the customer to keep the feature. The customer indicated again his desire to cancel the feature. Mr. Robinson responded with a second sales pitch. The customer then indicated, in an assertive tone, that he wanted the feature cancelled and did not want to be subjected to another sales pitch. The customer's assertive tone was reasonable and predictable under the circumstances. Mr. Robinson responded by abruptly terminating the call. Mr. Robinson indicates that he made the decision to terminate the call before the customer had the opportunity to become upset or abusive. However, the customer had not raised his voice to any significant degree and had not in any way become abusive towards Mr. Robinson.

The employer is a telemarketing firm. The employer has a zero-tolerance policy regarding terminating customer calls. That policy is set forth in writing in at least three separate documents received by Mr. Robinson. The employer's list of "TSR Expectations" indicates that, "Hanging up on customers is grounds for immediate termination, even when a customer says hello, and you do not respond quickly enough." The policy is also set forth in the employee handbook. Mr. Robinson acknowledged in writing his receipt and review of the handbook most recently on September 16, 2004. The policy is also set forth in a document that explicitly refers to the policy as a zero-tolerance policy and further indicates that employees were only allowed to hang up if a customer used profanity, and then only after the employee unsuccessfully attempted to calm the customer down. The employer enacted this policy specifically to prevent situations such as Mr. Robinson's hang up on February 1, 2005.

Mr. Robinson was well aware of the policy that prohibited hanging up on customers. Mr. Robinson was reprimanded at least twice before for the same behavior. Mr. Robinson had hung up on customers on other occasions, but avoided being reprimanded for those incidents. In addition, Mr. Robinson was reprimanded on November 23 and December 21, 2004 for being "rude and unprofessional" with a customer and acknowledged at the time of each reprimand that he understood that he could be discharged if the situation recurred.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Robinson was discharged for misconduct in connection with his employment.

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).

Since the claimant was discharged, the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The evidence in the record establishes that Mr. Robinson knowingly violated an established company policy on February 1, 2005 by hanging up on a customer. This was not merely a good faith error in judgment, because Mr. Robinson had received ample training on how to deal with the situation, had formally acknowledged the employer's policy on at least three separate occasions, and had been reprimanded on at least two prior occasions for the same behavior. Having reviewed the recorded telephone call between Mr. Robinson and the customer, the administrative law judge concludes there was no justification for hanging up on the customer. Mr. Robinson's actions amounted to a willful and wanton disregard of the employer's interests and standards of conduct the employer had a right to expect of its employees. See 871 IAC 24.32(1)(a). Mr. Robinson was discharged for misconduct. Accordingly, a disqualification will enter.

DECISION:

The Agency representative's decision dated March 8, 2005, reference 01, is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements.

jt/sc