

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATSY ORTEGA
Claimant

APPEAL NO. 07A-UI-05867-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACCESS DIRECT TELEMARKETING INC
Employer

**OC: 05/06/07 R: 02
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Access Direct Telemarketing, Inc. (Access) filed an appeal from a representative's decision dated June 6, 2007, reference 01, which held that no disqualification would be imposed regarding Patsy Ortega's separation from employment. After due notice was issued, a hearing was held by telephone on June 28, 2007. Ms. Ortega participated personally. The employer participated by Chris McCain, Team Manager, and Karen Merrill, Quality Supervisor. The employer was represented by Alyce Smolsky of Talx Corporation. Exhibits One through Nine were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Ortega was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Ortega was employed by Access from July 17, 2006 until May 3, 2007 as a full-time telephone sales representative (TSR). She was discharged after a series of warnings and counselings.

Ms. Ortega received a verbal warning on October 24, 2006 because she failed to disclose leasing fees and failed to read legal requirements to the customer. She indicated she did not know she had to disclose leasing fees since it appeared the customer already knew them. She received a written warning on November 19 because she failed to give the scripted rebuttals intended to overcome customer objections. Ms. Ortega received a verbal warning on December 2 because she failed to speak directly with a customer to obtain authorization to run a credit check using the customer's social security number. On this occasion, the caller was calling on her mother's behalf because the mother had difficulty hearing.

Ms. Ortega received a written warning on December 27 because she volunteered information to a caller to the effect that a credit check could be run under her husband's name. She also told the customer that the account could be set up under her mother's name. The mother already

had an account and, therefore, was not an eligible individual. She was given a final written warning on January 17 because she was quoting inaccurate price information and failed to read all parts of the legal disclosure. Ms. Ortega received an additional final warning on January 30 because she failed to acknowledge a caller. The call appears to be the tail end of a call in which the caller indicated he had the wrong number. After the caller indicated he had the wrong number, Ms. Ortega said "ok." The caller then said "hello" two times but there was no response from Ms. Ortega.

Ms. Ortega was counseled on March 28 because she was asking a caller if he was done speaking. She was attempting to make sure the caller was done speaking before proceeding. The customer found her conduct to be rude and requested to speak to a supervisor. The decision to discharge was triggered by the fact that Ms. Ortega did not respond to a call within the time frame desired by the employer on May 3. A TSR is expected to respond to a call in ten seconds or less. On this occasion, Ms. Ortega took 21 seconds to respond. When a TSR is awaiting the next call, they hear music in the headset. When the music stops, it is an indication that a call is ready. Ms. Ortega indicated she did not hear the call. She was notified of her discharge the same day.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). For reasons that follow, the administrative law judge concludes that disqualifying misconduct has not been established. The evidence established that Ms. Ortega had periodic lapses in good performance. A number of the problems occurred during the first four or five months of her employment when she was still relatively new to the job. The lapses did not establish a pattern or practice of disregarding the employer's standards. Although the employer's evidence established that Ms. Ortega was an unsatisfactory employee, it did not establish that she deliberately and intentionally acted in a manner she knew to be contrary to the employer's interests.

For the reasons cited herein, the administrative law judge concludes that substantial misconduct has not been established. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). Benefits are allowed.

DECISION:

The representative's decision dated June 6, 2007, reference 01, is hereby affirmed. Ms. Ortega was discharged by Access but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs