

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

BRETT E STOUT
210 – 32ND ST NE APT 4
CEDAR RAPIDS IA 52402

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

Appeal Number: 04A-UI-09468-HT
OC: 08/01/04 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
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Access Direct, filed an appeal from a decision dated August 26, 2004, reference 01. The decision allowed benefits to the claimant, Brett Stout. After due notice was issued a hearing was held by telephone conference call on September 27, 2004. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Program Manager Bryan Branscomb and was represented by Johnson and Associates in the person of Peg Heenan.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Brett Stout was employed by Access Direct from October 14, 2003 until August 2, 2004. He was a full-time telephone sales representative.

The claimant received several warnings and suspensions for failure to perform his job correctly. He was disciplined for entering incorrect customer information into the computer. This was the result of failing to follow the required procedures to double check the information. He was also disciplined several times for incorrectly reading the required disclosure statements to the customers. His final warning was on July 30, 2004, and he was notified his job was in jeopardy.

Mr. Stout had performed his job duties to the satisfaction of the employer during the first seven or eight months of his employment. However, his performance declined after he was removed from a supervisor training "track" due to problems with his interpersonal skills. The disciplinary actions were an attempt to put him back on the same level of performance he had attained early in his employment.

On August 1, 2004, Mr. Stout again failed to correctly read the required disclosure information to the customer. The call was monitored and the decision was made to discharge the claimant. He was advised by Operations Supervisor Shanna Rausch on August 2, 2004, he was discharged.

Brett Stout has received unemployment benefits since filing a claim with an effective date of August 1, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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 claimant was capable of performing his job to the satisfaction of the employer as evidenced by his earlier work record. A refusal to work to the best of one's ability is a violation of the duties and responsibilities an employer has the right to expect of employees. The claimant's conduct jeopardized Access Direct's business interests when he failed to read the required legal disclosure statements in full and verbatim, and for to entering incorrect information into the computer system when he failed to verify as required. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of August 26, 2004, reference 01, is reversed. Brett Stout is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible. He is overpaid in the amount of \$376.00.

bgh/tjc