

**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**

**JENNIFER HUEBBE
1635 –2ND AVE SE #2
CEDAR RAPIDS IA 52403**

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

**Appeal Number: 04A-UI-04659-ET
OC: 03-28-04 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/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 15, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 18, 2004. The claimant participated in the hearing. Michael Jennings, Center Manager; Aaron Johnson, TSR Program Manager; and Attorney Dawn Fox participated in the hearing on behalf of the employer. Employer's Exhibits One through Four were admitted into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time telephone sales representative for Access Direct from September 3, 2002 to March 30, 2004. The employer monitors employees' "wrap time," which is the amount of time between disconnecting from one customer and being ready to call the next customer. On March 2, 2004, the claimant received a verbal warning because her wrap time was over 11 percent (Employer's Exhibit One). On March 8, 2004, the claimant received a written warning because her wrap time was above 11 percent (Employer's Exhibit Two). The warning stated the employer expected the claimant's wrap time to be below 10 percent the following week (Employer's Exhibit Two). On March 15, 2004, the claimant received a final written warning because her wrap time was above 10 percent (Employer's Exhibit Three). On March 30, 2004, Program Manager Aaron Johnson told Center Manager Michael Jennings that the claimant "sat on" a line without a customer for 45 minutes. Mr. Johnson stated the claimant left her desk and was socializing. Mr. Jennings met with the claimant when she returned to her desk and informed her that the employer was terminating her employment (Employer's Exhibit Four). The claimant testified she left her desk to use the restroom and on her way back a new hire was "snapping," indicating she needed help with a call. The claimant did not see anyone else going to help her so she spent 15 to 20 minutes assisting the employee with the call. After the call was completed the claimant spent time with the new hire explaining why she instructed her to do certain things during the call so she would be able to handle the next similar call without assistance.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The claimant denies that she "sat on" a privacy line for 45 minutes March 30, 2004, and credibly testified she went to the restroom and then helped a new hire with a call. Although the claimant had been placed on a final written warning two weeks earlier because of her wrap times, the administrative law judge cannot conclude the claimant intentionally neglected her duties to socialize March 30, 2004, because it appears she was helping a new employee with a call and then explaining why she instructed her as she did once the call was completed. Consequently, the employer has not met its burden of proving disqualifying job misconduct as defined by Iowa law. Benefits are allowed.

DECISION:

The April 15, 2004, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/b