

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

TAMARA L KUHN
1418 GLENDALE AVE
AMES IA 50010-5528

ACCESS DIRECT TELEMARKETING INC
c/o TALK UC EXPRESS
PO BOX 6007
OMAHA NE 68106-6007

Appeal Number: 06A-UI-02362-CT
OC: 01/08/06 R: 02
Claimant: Respondent (4)

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:

Access Direct Telemarketing, inc. (Access) filed an appeal from a representative's decision dated February 15, 2006, reference 02, which held that no disqualification would be imposed regarding Tamara Kuhn's separation from employment. After due notice was issued, a hearing was held by telephone on March 16, 2006. The employer participated by Ernie Seeman, Center Manager, and was represented by Jessica Meyer of Talx UC Express. Ms. Kuhn did not provide a telephone number to be contacted to participate in the hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Kuhn was employed by Access from October 4, 2004 until February 3, 2005 as a full-time telephone sales representative. On February 2, 2005, she was presented with a quality assurance form outlining areas in which she needed to improve. She became argumentative and refused to sign the form. She indicated she intended to perform the job her way. Ms. Kuhn was approached again by a different individual and again refused to sign the form. She indicated she was not going to talk to quality assurance personnel.

Because of Ms. Kuhn's refusals, the center manager became involved. He approached Ms. Kuhn at her work station and asked her to shut off the telephone. She refused to turn off her telephone in spite of repeated requests from the center manager. After the center manager turned off the telephone, Ms. Kuhn was again asked to sign the quality assurance form and again refused. She was told she would be discharged if she continued in her refusal. When she still refused to sign, she was sent home. She was notified of her discharge the following day.

Ms. Kuhn has earned at least ten times her weekly job insurance benefit amount since her separation from Access.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Kuhn was separated from employment for any disqualifying reason. 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). Ms. Kuhn was discharged as a result of her conduct of February 2, 2005. She was clearly insubordinate in her refusal to sign a quality assurance form. Even if she disagreed with the content of the form, the employer had the right to expect her to sign it to acknowledge its receipt. Moreover, Ms. Kuhn compounded her insubordination by refusing to shut off her telephone when requested to do so by the center manager. She knew that she was being asked to turn off the telephone so that the manager could speak with her. Ms. Kuhn's conduct of February 2 constituted a substantial disregard of the standards the employer had the right to expect. As such, it is concluded that disqualifying misconduct has been established by the evidence.

Ms. Kuhn has requalified for job insurance benefits since her disqualifying separation from Access. Therefore, benefits are allowed but shall not be charged against Access.

DECISION:

The representative's decision dated February 15, 2006, reference 02, is hereby modified. Ms. Kuhn was discharged by Access for disqualifying misconduct but has requalified for job insurance benefits. Benefits are allowed, provided she satisfies all other conditions of eligibility, but shall not be charged to Access.

cfc/tjc