

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

PERRY F SUMMERS
2412 SCOTTSDALE ST
CEDAR RAPIDS IA 52404

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

Appeal Number: 04A-UI-10646-AT
OC: 09/05/04 R: 03
Claimant: Appellant (2)

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 96.5-2a - Discharge

STATEMENT OF THE CASE:

Perry F. Summers filed a timely appeal from an unemployment insurance decision dated September 21, 2004, reference 01, which disqualified him for benefits. After due notice was issued, a telephone hearing was held October 18, 2004 with Mr. Summers participating. Program Manager Ryan French testified for the employer, Access Direct Telemarketing, which was represented by Robin Remington of Johnson & Associates.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Perry F. Summers was employed as a telephone sales representative by Access Direct Telemarketing from February 3, 2004 until he was discharged August 26, 2004. On August 2, 2004, Mr. Summers and other under performing telephone sales representatives were assigned to a program selling services for America Online. Mr. Summers received a day or two of training. Thereafter, he made a series of mistakes ranging from mispronunciations to reading incorrect material concerning debit cards to failing to include a paragraph of the prepared script.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that Mr. Summers was discharged for disqualifying misconduct. It does not.

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 proof. See Iowa Code section 96.6-2. The evidence persuades the administrative law judge that Mr. Summers did not perform adequately with any consistency at any time that he was working on the America Online program. The evidence indicates that Mr. Summers was still basically unfamiliar with the script. No evidence has been submitted indicating either that Mr. Summers deliberately made errors or that he was negligent or careless in his work. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated September 21, 2004, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

kjf/tjc