

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

SHANNON D HAYES
113 WEST MAIME EISENHOWER ST
BOONE IA 50036

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

Appeal Number: 04A-UI-03273-DWT
OC 02/29/04 R 02
Claimant: Appellant (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 are 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

STATEMENT OF THE CASE:

Shannon D. Hayes (claimant) appealed a representative's March 22, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Access Direct Telemarketing, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 14, 2004. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Susanna Ettrich, attorney at law, represented the employer. Brian Buchnell and Valerie Jones were available to testify on the employer's behalf.

The claimant's wife did not contact the Appeals Section until the hearing had been closed and the employer had been excused. She requested that the hearing be reopened. Based on the

claimant's wife's request to reopen the hearing, the administrative record and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is there good cause to reopen the hearing?

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on February 3, 2003. He worked full time as a telephone service representative. The claimant knew about the employer's attendance policy and what would happen if an employee violated the attendance policy.

During his employment, the employer gave the claimant several warnings for attendance problems or failing to work as scheduled. On July 29, 2003, the employer gave the claimant a written warning to inform him was on a final warning for having 3.5 occurrences. The claimant received another final warning on August 23, 2003 for having 4 occurrences. On October 8, 2003, the claimant had accumulated 5.5 occurrences and received another final warning. When the claimant received the above occurrences, the employer warned him he would be discharged if had another occurrence by a certain date. The claimant did not have another occurrence before the specified date and preserved his employment.

On January 28, 2004, the claimant received a written warning for his attendance. The employer warned the claimant he would be discharged if he had another attendance occurrence before May 2, 2004. On February 24, 2004, the claimant called the employer to report he did not have a ride to work. The employer asked the claimant to try to get to work so he would only receive a half point. If the claimant had reported to work late, the employer would not have discharged him because he would not have accumulated four attendance points. The claimant told the employer there was no way he could get to work. When the claimant did not report to work on March 24, he had accumulated four attendance points within a rolling 90-day time frame. The employer discharged the claimant on February 24, 2004 for violating the employer's attendance policy.

The claimant or his wife received the hearing notice prior to the April 14 scheduled hearing. The claimant did not read the hearing notice. The claimant's wife told the claimant there was a hearing scheduled on April 14. She did not read the information on the hearing notice. No one on the claimant's behalf contacted the Appeals Section until 8:35 a.m. for the 8:00 a.m. April 14 hearing. By the time the claimant contacted the Appeals Section, the hearing had been closed and the employer had been excused. The claimant's wife asked that the hearing be reopened.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

The claimant did not participate in the scheduled hearing, because neither he nor anyone on his behalf read or followed the hearing instructions. The claimant did not establish good cause to reopen the hearing. The claimant's request is denied.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant knew or should have known his job was in jeopardy since July 2003 when the employer gave him warning letters for his repeated failure to work as scheduled. The facts do not establish why the claimant did not have transportation to work on February 24 or what efforts, if any, he made to get to work. The evidence does not establish the claimant's February 24 absence should be excused. A preponderance of the evidence shows the claimant intentionally disregarded his duty to report to work as scheduled. The employer discharged the claimant for work-connected misconduct.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's March 22, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 29, 2004. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/s