

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

MANLEY D FRYCKMAN
1604 – 1ST AVE NW
CEDAR RAPIDS IA 52405

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

Appeal Number: 04A-UI-10736-DWT
OC: 09/05/04 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 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:

Access Direct Telemarketing, Inc. (employer) appealed a representative's September 24, 2004 decision (reference 01) that concluded Manley D. Fryckman (claimant) was qualified to receive unemployment insurance benefits, and the employer's account could be charged for benefits paid to the claimant because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 17, 2004. The claimant participated in the hearing. Pamela Bloch, attorney at law, represented the employer. Bryan Branscomb, a program manager, testified on the employer's behalf. During the hearing, Employer's Exhibits One through Five were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on December 17, 2002. The claimant worked as a full-time telephone sales representative. The claimant received the employer's rules, which informed the claimant he could be discharged if he hung up on a customer or did not answer a call in a prompt and timely manner.

On October 24, 2003, the claimant received a written warning for failing to answer a call in a timely manner. (Employer's Exhibit One.) On October 30, 2003, the claimant received a final warning for failing to handle a call in a professional way. (Employer's Exhibit Two.) On August 26, 2004, the employer gave the claimant a final warning for hanging up on a customer and then immediately calling the customer back. (Employer's Exhibit Three.) The claimant did not tell the employer on August 26 that he had accidentally hit the disconnect key when he was entering a disposition of the call on his computer. On September 9, a quality assurance representative listened to the claimant's call and discovered he had not answered a call promptly. When the claimant realized he had missed the call, he immediately redialed the customer's phone number. Although the claimant told the employer on September 9 that he had not answered the call immediately because he was sneezing, the employer discharged him anyway.

On September 9, 2004, the employer discharged the claimant because he again failed to follow the employer's procedure when responding to or talking to a customer on the phone.

REASONING AND CONCLUSIONS OF LAW:

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. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

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).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The employer established business reasons for discharging the claimant. The evidence does not, however, indicate that the claimant intentionally failed to follow the employer's rules. The claimant did not intentionally hang up on a customer or deliberately miss an incoming call on August 26 and September 9. The facts do not establish that the claimant was so careless or negligent that his actions constitute work-connected misconduct. The claimant made some mistakes, but his mistakes were not intentional. The claimant should have immediately reported he missed a call when he was sneezing. Since the claimant told the employer about the sneezing incident after the employer's quality assurance representative noticed a problem with the claimant's response in picking up a phone call, this omission at most amounts to a good faith error in judgment. The evidence does not establish that the claimant committed work-connected misconduct. Therefore, as of September 5, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's September 24, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of September 5, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs