

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

HEATHER M BUBKE
Claimant

APPEAL NO. 10A-UI-16186-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACCESS DIRECT TELEMARKETING INC
Employer

OC: 10/24/10
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Access Direct Telemarketing, Inc. filed an appeal from a representative's decision dated November 17, 2010, reference 01, which held that no disqualification would be imposed regarding Heather Bubke's separation from employment. After due notice was issued, a hearing was held by telephone on January 14, 2011. Ms. Bubke participated personally. The employer participated by Renae Hubbard, Human Resources Generalist.

ISSUE:

At issue in this matter is whether Ms. Bubke was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Bubke was employed by Access Direct Telemarketing, Inc. from August 2 until October 27, 2010 as a full-time telephone sales representative. She was discharged based on an allegation that she set up an account for a customer on October 1 without the customer's permission.

Ms. Bubke continued to work between October 1 and October 27. The employer could offer no explanation as to why there was a delay in her discharge. She did not have any history of disciplinary actions. The above matter was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

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). The employer's burden included establishing that the discharge was predicated on a current act of misconduct. 871 IAC 24.32(8). In the case at hand, the employer was immediately aware of Ms. Bubke's conduct on October 1 because she was being

monitored. She was not discharged until October 27, over three weeks after the alleged incident.

The employer could offer no explanation for the delay in discharging Ms. Bubke. The administrative law judge need not determine whether the conduct complained of did, in fact, occur. Even if she had violated the employer's standards, the employer failed to establish any justification for the delay in discharge. Given the lapse of time, the administrative law judge cannot conclude that the discharge was based on a current act of misconduct. As such, no disqualification is imposed.

DECISION:

The representative's decision dated November 17, 2010, reference 01, is hereby affirmed. Ms. Bubke was discharged but a current act of misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css