

**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**

**CHRISTINA M CHAVEZ
1739 – 5TH AVE SE
CEDAR RAPIDS IA 52403**

**ACCESS DIRECT TELEMARKETING INC
C/o JOHNSON & ASSOCIATES
PO BOX 06007
OMAHA NE 68106-0007**

**Appeal Number: 04A-UI-02043-B4T
OC: 01-18-04 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 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

STATEMENT OF THE CASE:

An appeal was filed on behalf of the employer from an unemployment insurance decision dated February 18, 2004, reference 1, that held, in effect, Christina M. Chavez was discharged from her employment with Access Direct Telemarketing, Inc. on January 15, 2004 for no disqualifiable reason. Unemployment insurance benefits were allowed.

A telephone conference hearing was scheduled and held on March 15, 2004 pursuant to due notice. Christina M. Chavez did not respond to the notice of hearing mailed to her by the Appeals Section by providing a telephone number where she could be contacted on the day of the scheduled hearing. The claimant did not participate in the hearing held.

Mary Thielen, employer representative with TALX UC eXpress, participated on behalf of the employer. Mike Matejka, General Manager, participated as a witness on behalf of the employer. Sabrina Stover was scheduled to participate as a witness but was not available.

Official notice was taken of the unemployment insurance decision dated February 18, 2004, bearing reference 01, together with the pages attached thereto (5 pages in all).

FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that: Christina M. Chavez was employed as a telephone sales representative on November 15, 2003. The claimant was employed at the Cedar Rapids, Iowa facility operated by Access Direct Telemarketing, Inc.

During the tenure of the claimant's employment she was allegedly issued written warnings concerning alleged poor job performance or a failure to comply with rules allegedly adopted by the employer. No documentation was provided by the employer with respect to the alleged written warnings issued and/or verbal warnings, if any. In addition, no documentation was provided with respect to the rules which were allegedly violated by the claimant.

The last incident of alleged poor job performance was not documented but apparently occurred prior to January 15, 2004. On January 15, 2004 the claimant was discharged by Sabrina Stover, a management person with Access Direct Telemarketing, Inc.

The evidence indicated the claimant allegedly failed to complete telephone calls made to customers in a proper manner, as may have been prescribed by the telemarketing customer of Access Direct Telemarketing, Inc.

REASONING AND CONCLUSIONS OF LAW:

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).

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has failed to provide documentation or explicit and direct evidence relating to the alleged incidents of misconduct on the part of the claimant. No documentation was provided regarding the employer's disciplinary policy or the rules to which the claimant was required to comply with when operating as a telephone sales representative.

The evidence provided in this record at most would disclose an inadvertent failure in good performance or ordinary negligence in isolated instances. Such conduct is not deemed misconduct within the intent and meaning of the foregoing section of the Iowa Administrative Code. The record does not establish an intent on the part of the claimant to substantially disregard the employer's interests and the claimant's duties and obligations to the employer.

The administrative law judge concludes that Christina M. Chavez was discharged from her employment with Access Direct Telemarketing, Inc. on January 15, 2004 for no disqualifiable reason within the intent and meaning of Iowa Code Section 96.5-2-a and the foregoing sections of the Iowa Administrative Code.

DECISION:

The unemployment insurance decision dated February 18, 2004, reference 1, is affirmed. Kristina M. Chavez was discharged from her employment with Access Direct Telemarketing, Inc. on January 15, 2004 for no disqualifiable reason and unemployment insurance benefits are allowed, provided the claimant is otherwise eligible under the provisions of the Iowa Employment Security Law. Benefits paid may be charged to the account of Access Direct Telemarketing, Inc.

b/b