

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

CHARLES D ROBERTSON
PO BOX 2672
IOWA CITY IA 52244-2672

ACCESS DIRECT TELEMARKETING INC
c/o TALK UC EXPRESS
PO BOX 6007
OMAHA NE 68106-6007

Appeal Number: 06A-UI-07608-CT
OC: 07/02/06 R: 03
Claimant: Respondent (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(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Access Direct Telemarketing, Inc. (Access) filed an appeal from a representative's decision dated July 24, 2006, reference 01, which held that no disqualification would be imposed regarding Charles Robertson's separation from employment. After due notice was issued, a hearing was held by telephone on August 22, 2006. Mr. Robertson participated personally. The employer participated by Heather Hoyt, Center Manager, and Yvonne Podhajsky, Program Manager. The employer was represented by Peg Heenan of TALX UC eXpress. Exhibits One through Nine were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Robertson was employed by Access from November 7, 2005 until April 25, 2006 as a full-time telephone sales representative. He was discharged for violating the employer's standards. Mr. Robertson worked on a program where he would respond to calls from individuals who desired to cancel credit card protection benefits. His primary job was to try to retain those individuals as customers.

On February 3, 2006, Mr. Robertson received a written warning because he misrepresented the money-back guarantee. The customer had enrolled in the credit protection program and called to report that the "welcome" package had not yet been received. Mr. Robertson agreed to resend the materials and told the customer that the 30-day, money-back guarantee would be effective when he sent the new materials. In actuality, the guarantee is effective from the date of enrollment, not from when the "welcome" package is sent. On February 6, Mr. Robertson received a written warning because he misrepresented the rebate program. He led the customer to believe he could obtain a rebate greater than the maximum rebate of \$50.00 that was available.

On February 7, Mr. Robertson received a final warning because he entered the incorrect disposition code. He marked the customer as ineligible, which meant that the cancellation would not effect his "save" rate. He assumed the customer was retired because of his age but the matter was not discussed with the customer. If the customer was eligible and declined the benefit, the refusal would count against Mr. Robertson's numbers. On March 2, Mr. Robertson received another written warning when he again misrepresented the start date of the 30-day, money-back guarantee.

On March 7, Mr. Robertson received a written warning because he misrepresented to the customer that the customer was eligible for relocation benefits. The customer was staying temporarily in a motel but had not relocated. As such, he was not eligible for relocation benefits. On March 8, another written warning was given to Mr. Robertson. He told the customer they would be receiving a \$30.00 gift card as an incentive. However, what the customer would actually receive was three \$10.00 gift cards. This information was readily available on the computer screen. On March 21, he received a written warning because he offered a \$50.00 gift card as an incentive when one was not available to the customer.

Mr. Robertson received another final warning on April 11 after he told a customer he was sending a gift card for \$50.00. The customer only wanted information. Gift cards are available only with an enrollment, not when the individual only wants information on the program. The final warning was on April 11 when Mr. Robertson misstated the cost of a program. He quoted \$24.00 when the actual cost was \$24.95. The decision to discharge was based on the fact that he transferred a call on April 25. A customer called to cancel and was explaining what he wanted. Without notifying the customer, Mr. Robertson transferred the call to customer service. He did not remain on the line to notify customer service as to the reason for the transfer. The customer was not being belligerent or abusive during the call. Transferring a call without notice is referred to as a "cold transfer." Cold transfers are not allowed in his unit. Mr. Robertson was notified of his discharge the same day.

Mr. Robertson filed a claim for job insurance benefits effective July 2, 2006. He has received a total of \$1,434.00 in benefits since filing his claim.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Robertson was separated from employment for any disqualifying reason. 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). Mr. Robertson was discharged for violating the employer's standards with regard to information provided to customers. The information he needed in order to assist customers was available on his computer screen or in written materials he could access. Supervisors were available if he had questions. The administrative law judge does not believe he deliberately or intentionally misrepresented facts to customers. However, he was negligent in not making sure the information he provided was correct.

Negligence constitutes disqualifying misconduct if it is so recurrent that it manifests a substantial disregard of the employer's interests or standards. The numerous warnings Mr. Robertson received should have been sufficient to put him on notice that his employment was in jeopardy. However, he continued to make misrepresentations in spite of the warnings. In fact, he again misstated the money-back guarantee provisions on March 2 after being warned on February 3 that he was misstating it. Mr. Robertson testified that the coachings "went in one ear and out the other." The employer's customer expected that only correct information would be provided to its customers. Mr. Robertson's actions had the potential of negatively impacting his employer's relationship with its customer. This is especially true if customers were being offered benefits that were either not available or for which the customer was not eligible.

The administrative law judge concludes that Mr. Robertson's repeated negligence is sufficient to establish disqualifying misconduct. Accordingly, benefits are denied. Mr. Robertson has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated July 24, 2006, reference 01, is hereby reversed. Mr. Robertson was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Robertson has been overpaid \$1,434.00 in job insurance benefits.

cfc/kjw