

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

RUTH M MOSLEY  
255 MADISON ST  
WATERLOO IA 50703-4239

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

Appeal Number: 06A-UI-02801-HT  
OC: 02/05/06 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge  
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Access Direct, filed an appeal from a decision dated February 27, 2006, reference 01. The decision allowed benefits to the claimant, Ruth Mosley. After due notice was issued, a hearing was held by telephone conference call on March 29, 2006. The claimant participated on her own behalf. The employer participated by Center Manager John O'Dell and Administrative Assistant Kate LeMaster. The employer was represented by TALX in the person of Dawn Gibson

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Ruth Mosley was employed by Access Direct from May 19, 2005 until February 7, 2006. She was a full-time CSR.

On May 28, 2005, Ms. Mosley received a final written warning for incorrectly dispositioning a call. This is considered a serious quality issue and the progressive disciplinary policy calls for the first step to be a final written warning. The claimant was counseled that any other serious quality infractions would lead to immediate discharge.

On February 7, 2006, the claimant was being monitored by Administrative Assistant Kate LeMaster. The computer generated an outgoing call and when the customer answered, Ms. Mosley hung up. She then had the computer call the same number and again when the customer answered, she hung up. The call was recorded and reviewed by Center Manager John O'Dell.

Ms. Mosley was called into the office and the recording was played for her. She had no explanation for the incident and was then informed she was being discharged for a second serious quality infraction. She refused to sign the separation documents and left.

Ruth Mosley has received unemployment benefits since filing a claim with an effective date of February 5, 2006.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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).

The claimant had been advised her job was in jeopardy if she had any other serious quality infractions. In spite of the warning the claimant twice hung up on a customer. There is no evidence of equipment malfunction and no other explanation provided by the claimant. Hanging up on a customer is a serious incident and a violation of the duties and responsibilities the employer had the right to expect of its employees. It created poor business relations with customers and jeopardized business with the client. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

#### DECISION:

The representative's decision of February 27, 2006, reference 01, is reversed. Ruth Mosley is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$641.00.

bgh/kkf