

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

MATTHEW E JOHNSON  
714 S OAK ST  
JEFFERSON IA 50129

ACCESS DIRECT TELEMARKETING INC  
c/o JOHNSON AND ASSOCIATES  
PO BOX 7  
OMAHA NE 68106-0007

Appeal Number: 04A-UI-00920-AT  
OC: 12/21/03 R: 02  
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

STATEMENT OF THE CASE:

Access Direct Telemarketing, Inc., filed a timely appeal from an unemployment insurance decision dated January 21, 2004, reference 01, which allowed benefits to Matthew E. Johnson. After due notice was issued, a telephone hearing was held on February 16, 2004 with Program Manager Dan Garcia testifying for the employer which was represented by Roxanne Bekaert, Attorney at Law, of Johnson and Associates. Mr. Johnson did not provide a telephone number at which he could be contacted.

#### FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Matthew E. Johnson was employed as a telephone sales representative by Access Direct Telemarketing, Inc. from November 17, 2003 until he was discharged on December 20, 2003. On December 27, 2003, Program Manager Dan Garcia was monitoring the telephone sales representatives, including Mr. Johnson. He observed Mr. Johnson not following established procedure in responding to customers. Mr. Johnson had received a previous warning for this infraction. Mr. Garcia called Mr. Johnson into his office, intending to give him another performance warning. Mr. Johnson was not receptive to the warning and began blaming Mr. Garcia for his performance problems. Mr. Johnson had received a warning two days earlier for argumentative behavior with another supervisor. He had promised that the behavior would not be repeated. When Mr. Garcia observed similar behavior on December 22, 2003, he decided to discharge Mr. Johnson.

Mr. Johnson has received no benefits since filing a claim effective December 21, 2003.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Johnson was discharged for misconduct in connection with his work. It does.

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 evidence establishes that Mr. Johnson was confrontational and argumentative with Mr. Garcia when the latter attempted to coach Mr. Johnson on the proper performance of his work. Since the behavior was similar to behavior which had been displayed and for which a warning had been issued two days earlier, the administrative law judge concludes that the evidence is sufficient to establish misconduct. Benefits are withheld.

There has been no overpayment because the claimant has received no benefits during his present benefit year.

DECISION:

The unemployment insurance decision dated January 21, 2004, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

kjf/b