

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

HAZEL A MEYOCKS
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ACCESS DIRECT TELEMARKETING NIC
c/o JOHNSON & ASSOCIATES
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OHAHA NE 68106-0007

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Appeal Number: 05A-UI-11224-JTT
OC: 09/25/05 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 for Misconduct

STATEMENT OF THE CASE:

Access Direct Telemarketing filed a timely appeal from the October 24, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on November 16, 2005. Claimant Hazel Meyocks participated personally and was represented by Attorney Bill Croghan. Attorney Jessica Meyer of Talx UC Express/Johnson & Associates represented Access Direct and presented testimony through Cedar Rapids Center Manager Rich Brecht and Program Manager Travis Eichelberger. Exhibits One and Two were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Hazel Meyocks was employed by Access Direct Telemarketing as a full-time telephone sales

representative from April 7, 1997 until September 26, 2005, when Program Manager Travis Eichelberger discharged her for violations of a “zero tolerance” policy.

The final incident that prompted the discharge occurred on September 26. During the course of Ms. Meyocks’ shift, the employer’s computerized automatic dialing system connected Ms. Meyocks with a prospective consumer. During the course of the telephone call, the connection was lost. Ms. Meyocks had not terminated the call. Based on the “fuzzy” sound on the line, Ms. Meyocks concluded the prospective consumer had not terminated the call. Ms. Meyocks believed the consumer might have been on a cell phone or cordless phone that lost a signal. Ms. Meyocks went through the steps of ending the transaction and “dispositioning” or coding the phone call. Ms. Meyocks coded the call as an instance where the consumer was unavailable. This code ensured that the consumer would be contacted again within a day or two.

Quality Assurance Representative Emily Croft evaluated the call and concluded that Ms. Meyocks had committed two “zero tolerance” violations. Ms. Croft concluded Ms. Meyocks had committed a violation by hanging up on a customer. Ms. Croft also concluded that Ms. Meyocks improperly “mis-dispositioned” the call as an instance of an unavailable consumer when she should have coded the call as a consumer refusal. A consumer refusal would adversely impact Ms. Meyocks’ and Access Direct’s sales statistics, whereas an unavailable consumer would not. Ms. Meyocks had not considered the employer’s statistics when she “dispositioned” the telephone call. Instead, Ms. Meyocks wanted to ensure that Access Direct followed up with the consumer in the immediate future.

Ms. Croft notified Program Manager Travis Eichelberger of the alleged violations. Mr. Eichelberger met with Ms. Eichelberger to review the phone call and discuss the violations. Ms. Eichelberger advised Ms. Meyocks that she was being discharged for the “zero tolerance” violations. Ms. Meyocks was not aware that she had committed a “zero tolerance” violation. The “zero tolerance” violations that prompted Ms. Meyocks’ discharge did not appear in any versions of the employee handbook Ms. Meyocks had received during her employment or in any stand-alone policy statements issued to Ms. Meyocks.

On May 26, 2005, Ms. Meyocks had received a “final warning” for another “zero tolerance” violation. In that instance, the employer concluded that Ms. Meyocks had missed a call routed to her by the computerized automatic dialing system. The “final warning” was actually the first warning. The “final warning” subjected Ms. Meyocks to subsequent discharge in the event she committed another “zero tolerance” violation.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Meyocks was discharged for misconduct in connection with the employment. It does not.

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).

Since the claimant was discharged, the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992). While past acts and warnings can be used to determine the magnitude of the current act to misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8).

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. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The evidence in the record fails to establish that Ms. Meyocks engaged in any misconduct in connection with the telephone call with the prospective consumer on September 26. The employer alleged that Ms. Meyocks hung up on the customer. The evidence in the record does not support that allegation. The employer alleges that Ms. Meyocks "mis-dispositioned" the telephone call. The implication is that Ms. Meyocks was trying to protect her sales statistics.

However, the evidence in the record does not support a conclusion that Ms. Meyocks did in fact "mis-disposition" the call or that she did so with the intent to skew her sales statistics. The employer failed to present testimony from Ms. Croft, who apparently monitored and evaluated the call. The employer failed to present either a recording or a transcript of the telephone call. The weight of the evidence indicates that Ms. Meyocks, at worst, made a good faith error in judgment in connection with the call. This is not misconduct. The mistake Ms. Meyocks made in connection with a telephone call four months prior does not make the mistake on September 26 misconduct. Mistakes on two phone call in the course of a four month period does not demonstrate a pattern of carelessness or negligence.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Meyocks was discharged for no disqualifying reason. Accordingly, Ms. Meyocks is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Meyocks.

DECISION:

The Agency representative's decision dated October 24, 2005, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

jt/tjc