

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

LORI A HARRIS

Claimant

APPEAL NO. 07A-UI-03941-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACCESS DIRECT TELEMARKETING INC

Employer

**OC: 03-25-07 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 11, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 2, 2007. The claimant did participate. The employer did participate through Rebecca Schwertfeger, Human Resources Manager and was represented by Ted Arndt of TALX UC eXpress.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a consultative sales representative full time beginning September 2, 2003 through March 26, 2007, when she was discharged.

The claimant was given a final written warning on March 26 for a negative attitude in the workplace. The claimant was instructed not to discuss the details of her disciplinary warning with her coworkers. Once the claimant left the meeting she went directly onto the call floor where she began discussing the details of the disciplinary warning she had just been given with two coworkers. The claimant was speaking to her supervisor Denise and to her coworker Ali McNamara. Both Denise and Ali gave statements to the employer indicating that during their discussions with the claimant she made a threat about throwing office furniture if she was removed from a particular program. The claimant denies making any threats against any employee or threatening to throw office furniture. The claimant had just been explicitly told not to discuss her discipline on the call floor and she ignored the employer's instructions. The claimant had been previously disciplined for using profanity on the call floor and for quality concerns on calls.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 administrative law judge is persuaded that the claimant did make threats about throwing furniture while she was on the call floor. There was no reason for her friend and coworker Ali to indicate otherwise. The claimant had just been told not to discuss her discipline on the call floor and she ignored those instructions and made threatening remarks. The claimant knew that her conduct was placing her job in jeopardy. Her actions amount to misconduct sufficient to disqualify her from receiving unemployment insurance benefits. Benefits are denied.

DECISION:

The April 11, 2007, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has

worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css