

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

MARK C JOHNSTON  
212 – 18<sup>TH</sup> ST NE  
CEDAR RAPIDS IA 52402

ACCESS DIRECT TELEMARKETING INC  
C/o TALX UCM SERVICES INC  
PO BOX 6007  
OMAHA NE 68106-0007

Appeal Number: 04A-UI-02233-DWT  
OC 01/25/04 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 are 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 96.5-1 – Voluntary Quit  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Access Direct Telemarketing, Inc. (employer) appealed a representative's February 19, 2004 decision (reference 01) that concluded Mark C. Johnston (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 19, 2004. The claimant participated in the hearing. Peg Heenan, a representative with TALX, appeared on the employer's behalf with Brian Branscomb, a program manager, as the employer's witness. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on October 22, 2002. He worked as a full-time telephone sales representative. Branscomb was the claimant's manager.

Since December 15, 2003, the claimant's attendance was sporadic. When the claimant was unable to work he had called in sick. The employer asked the claimant for a doctor's excuse for his absences, but did not receive the requested statement. On January 5, 2004, the claimant reported to work. The claimant did not look ill on January 5.

The claimant called the employer January 6 through 9 to report he was ill and unable to work as scheduled. The claimant did not call or report to work the week of January 12, 2004. The claimant heard from a reliable source he had been discharged. The claimant did not call the employer to confirm this information.

The employer did not sever the claimant's employment relationship until January 15. When the claimant did not call or contact the employer for three consecutive days, January 12, 13, 14 and 15, the employer assumed the claimant voluntarily quit his employment. The claimant and employer did not have any contact with one another after January 9, 2004.

The claimant established a claim for unemployment insurance benefits during the week of January 25, 2004. The claimant filed claims for the weeks ending January 31 through March 13, 2004. He received his maximum weekly benefit amount of \$245.00 during each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The employer did not discharge the claimant. Instead, the claimant voluntarily quit his employment by failing to contact the employer after January 9, 2004. When a claimant quits, he has the burden to establish he quit with good cause attributable to the employer. Iowa Code §96.6-2.

The claimant abandoned his job when he incorrectly assumed the employer discharged him based on hearsay information. The claimant's failure to contact the employer after January 9 in an attempt to keep his job further indicates the claimant quit his employment. The claimant established personal reasons for quitting. His reasons for not going back to work or calling the employer after January 9 do not amount to good cause for unemployment insurance purposes. As of January 25, 2004, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the

overpayment. Iowa Code §96.3-7. The claimant is not qualified to receive unemployment insurance benefits during the weeks ending January 31 through March 13, 2004. He has been overpaid a total of \$1,715.00 in benefits he received for these weeks.

DECISION:

The representative's February 19, 2004 decision (reference 01) is reversed. The employer did not discharge the claimant. Instead, the claimant voluntarily quit his employment by abandoning it. The claimant is disqualified from receiving unemployment insurance benefits as of January 25, 2004. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's will not be charged. The claimant is not legally entitled to receive benefits during the weeks ending January 31 through March 13, 2004. He has been overpaid a total of \$1,715.00 in benefits he receive for these weeks.

dlw/b