

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KETRA D BECERRA
Claimant

APPEAL NO. 07A-UI-07717-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACCESS DIRECT TELEMARKETING INC
Employer

OC: 07/15/07 R: 12
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Ketra D. Becerra (claimant) appealed a representative's August 8, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Access Direct Telemarketing, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 27, 2007. The claimant participated in the hearing. Joshua Burrows, a representative with TALX, appeared on the employer's behalf. Renee Harmon testified on the employer's behalf and Jason Clausen was present to testify. During the hearing, Employer Exhibits One, Two, and Three were offered and admitted as evidence. 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.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 1, 2004. The claimant worked as a full-time telemarketer. Harmon supervised the claimant.

The claimant received a copy of the employer's handbook. The handbook informed employees they could be discharged if they had unaccounted time while still logged in. The employer pays employees for a 10-minute break and when the employee takes this break, they put their phone on hook. When an employee takes an unpaid lunch break, they are not logged in on the time clock.

Prior to July 13, 2007, the claimant's job was not in jeopardy. On July 17, the employer talked to the claimant and other employees who worked second shift to find out why second shift had a much lower efficiency than first shift. When Harmon talked to the claimant, the claimant indicated the reason for the lower efficiency was because second-shift employees intentionally dropped calls, abandoned calls and goofed around. After the claimant talked to Harmon, she

made the comment to a co-worker that efficiency was so low because second-shift employees left the workplace to buy cigarettes. Another employee reported this to the employer.

The employer learned that on July 13, the claimant and another employee left the workplace for 10 to 15 minutes on an unauthorized break. (Employer Exhibits Two and Three.) When the employer asked the claimant, she admitted she left with another employee about 8:45 p.m. and went to Casey's. The claimant returned to work 10 to 15 minutes later. When the claimant left she put her phone on hook. The claimant left when another employee asked if she wanted to go to Casey's, which was about four blocks away. The claimant was hungry and went to pick up some food.

On July 17, the employer discharged the claimant for leaving work on July 13 on an unauthorized break. The employer discharged the other employee also.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Prior to July 13, 2007, the claimant's job was not in jeopardy. The claimant saw co-workers on second shift goof off, drop calls and abandon calls. The supervisor on duty did not address these issues or at least did not address these issues satisfactorily because the efficiency of second-shift employees was noticeably lower than first-shift employees. The claimant saw employees on her shift regularly leave the workplace without being disciplined. On July 13, when an employee asked the claimant if she wanted to go to Casey's the claimant went because she was hungry. The claimant put her phone on hook and was away from her desk for 10 to 15 minutes.

The facts indicate employees on second shift regularly left work during a shift. A preponderance of the evidence does not establish that the employer disciplined employees who left the workplace prior to July 13. The claimant's job was not in jeopardy prior to July 13. The claimant did not understand she could not leave the workplace during a paid break. Based on the facts presented during the hearing, the claimant exhibited poor judgment on July 13. The facts do not establish that the claimant intentionally disregarded the employer's interests. For

unemployment insurance purposes, the claimant did not commit work misconduct. As of July 15, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's August 8, 2007 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of July 15, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css