

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

TAMIE S ROGERS
703 MEADOW PL
AMES IA 50010

ACCESS DIRECT TELEMARKETING INC
% TALX UC EXPRESS
PO BOX 6007
OMAHA NE 68106-6007

Appeal Number: 04A-UI-08284-CT
OC: 07/04/04 R: 02
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, Inc. (Access) filed an appeal from a representative's decision dated July 22, 2004, reference 01, which held that no disqualification would be imposed regarding Tamie Rogers' separation from employment. After due notice was issued, a hearing was held by telephone on August 24, 2004. Ms. Rogers participated personally. The employer participated by Bryan Bucknell, Center Manager, and Sunee Lighthall, Quality Assurance Representative. The employer was represented by Suzanna Ettrich, Attorney at Law. Exhibits One through Seven were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Rogers was employed by Access from October 7, 2002 until July 2, 2004 as a full-time telephone sales representative. She was discharged for failing to timely respond to calls. An automatic dialer places outbound calls for the sales representatives. Once the call is answered by the customer, information concerning the customer comes up on the representative's computer screen. The information does not appear simultaneously with the customer's answering of the telephone. The appearance of the information may or may not be accompanied by a beep. Once the customer answers, the representative is expected to immediately open a dialog with the customer.

On August 21, 2003, Ms. Rogers received a written warning after a quality assurance representative reported that she was not taking calls. On December 30, she received another written warning after her supervisor observed her not taking a call. On this occasion, the customer said "hello" twice and then hung up. Ms. Rogers said "hello," but the customer was no longer on the line at that point. On February 13, 2004, Ms. Rogers received an additional written warning for not taking calls. On this occasion, the customer said "May I help you" and, apparently hearing no response from Ms. Rogers, hung up. Ms. Rogers then hung up also. She received further disciplinary action on May 18 for not answering calls. On one of the calls on this date, the customer said "hello" three times and then hung up when receiving no response. On the second call on this date, the customer said "hello" two times before hanging up. The final incident which triggered the discharge occurred on July 2. On this occasion, the customer answered the telephone, identified the business, and then waited before hanging up. Ms. Rogers was heard to ask for a customer by name and then say "hello." However, the customer was no longer on the line.

Ms. Rogers was considered a good employee in terms of her sales. She had received a bronze certificate for sales in January and April of 2004. She had been in the President's Club in February of 2004 because of her sales performance. There were a number of occasions on which she was monitored and received perfect scores. In June of 2004, the employer initiated a "zero tolerance" policy for the failure to answer calls timely.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Rogers was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Rogers was discharged because she failed to respond to calls timely. Given her sales performance, the administrative law judge is not inclined to believe that she deliberately failed to answer calls. It seems more likely that she did not hear the customer or the customer hung up before she could get to them. The administrative law judge believes the conduct is more a matter of negligence than deliberate omission.

Negligence constitutes disqualifying misconduct only if it is sufficiently recurrent as to manifest an intentional disregard of the employer's standards or interests. Ms. Rogers missed nine calls over a period of just over ten months. Given the volume of calls a telephone sales representative no doubt handles in the course of a day, the administrative law judge does not consider this excessive. It does not represent negligence of such a degree as to manifest a

substantial disregard for the employer's interests or standards. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, the administrative law judge concludes that disqualifying misconduct has not been established. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated July 22, 2004, reference 01, is hereby affirmed. Ms. Rogers was discharged by Access but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/smc