

**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**

**SHADIA N RESTUM  
4027 – 20<sup>TH</sup> AVE SW #5  
CEDAR RAPIDS IA 52404**

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

**Appeal Number: 05A-UI-01689-CT  
OC: 01/09/05 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, 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 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.

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(Administrative Law Judge)

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(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 February 8, 2005, reference 01, which held that no disqualification would be imposed regarding Shadia Restum's separation from employment. After due notice was issued, a hearing was held by telephone on March 7, 2005. The employer participated by Justin Linnell, Program Manager, and was represented by Suzanne Ettrich of Talx UC Express. Ms. Restum did not respond to the notice of hearing.

#### FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Restum began working for Access on May 5, 2004 as a part-time telephone sales representative. She became separated from the employment because of her attendance. She received four written warnings on June 29 because she was absent on May 17, May 19, June 2 through 5, and June 17. Ms. Restum received two additional warnings on July 20 because she was absent on July 12 and late on July 14. She was late on July 21 and received another warning. She received a written warning on August 18 after she was absent on August 17. Ms. Restum received a written warning and was placed on 30 day's probation on December 8 after she left work early on November 29. She was again absent on January 4 and, therefore, received a warning on January 5.

On January 12, Ms. Restum notified the employer that someone she knew had shot a gun at her house. She wanted to leave work early to file a police report. She was told she could leave but would need to provide documentation that she had spoken to the police when she returned to work. On January 13, she telephoned the employer to advise that she had changed her mind about filing a police report. She felt filing a police report might jeopardize her subsidized housing. She asked whether she should turn in her headset and was told that she should as her attendance had not shown the necessary improvement. Attendance was the sole reason for Ms. Restum's January 13, 2005 separation from Access.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Restum 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. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving job insurance benefits if she was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences. It was incumbent upon the employer to provide specific details as to the reasons for discharge as mere allegations of misconduct are not sufficient to result in disqualification from benefits. The employer's evidence failed to establish that Ms. Restum's absences were not for reasonable cause.

It is true that Ms. Restum had been warned about her attendance. However, the fact that one has been warned does not establish excessive unexcused absenteeism, only that the individual has missed time from work. It is true that Ms. Restum knew that her continued employment was in jeopardy when she left work on January 12. She was told she could leave early because she intended to file a police report concerning a shooting at her home. There was no evidence that her statement to the employer was other than a good-faith expression of her intent at the time. She changed her mind about filing a police report only after she considered a possible adverse consequence of such a report. Inasmuch as the absence was in good faith and for good cause, the administrative law judge concludes that it was not an act of misconduct.

After considering all of the evidence, the administrative law judge concludes that the employer has failed to satisfy its burden of proving excessive unexcused absenteeism. 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, benefits are allowed.

DECISION:

The representative's decision dated February 8, 2005, reference 01, is hereby affirmed. Ms. Restum was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjf