

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

BEAU A MALCOLM
1203 W CHURCH ST #2
MARSHALLTOWN IA 50159

ACCESS DIRECT TELEMARKETING INC
c/o TALX/JOHNSON & ASSOC
PO BOX 6007
OMAHA NE 68106 0007

Appeal Number: 05A-UI-02664-DWT
OC: 02/06/05 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

STATEMENT OF THE CASE:

Access Direct Telemarketing, Inc. (employer) appealed a representative's March 8, 2005 decision (reference 01) that concluded Beau A. Malcolm (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 April 5, 2005. The claimant participated in the hearing. Suzanna Ettrich represented the employer and Nate Bradbury, the center manager, testified on the employer's behalf. 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 November 22, 2004. The claimant worked as a part-time telephone sales representative. The employer trained the claimant to read a prepared script verbatim when he closed a transaction with a customer.

On December 13, 2004, the employer coached the claimant when he had not read the required script verbatim. On December 14, 2004, the employer gave the claimant a verbal warning for this same problem. The employer gave the claimant a written warning on December 21, 2004, for again failing to read the required script exactly as it was written. On January 6, 2005, the employer gave the claimant his final written warning for failing to follow the script exactly as it was written. The employer also had the claimant do some role-playing to make sure the claimant could read the mandated script correctly. The employer suggested that the claimant talk slower when he read the prepared script. The claimant understood that if he had any more problems of this nature, he would be discharged.

On January 29, the claimant was working with a new program. At the end of a transaction, the claimant again was required to read script that was on his computer. When the claimant read the required script for one customer, he left out a zero when he read the person's account number. Upon reviewing the tape recording of this transaction, the employer discovered this error on January 30, 2005. On January 31, 2005, the employer discharged the claimant for again failing to read verbatim the required script to a customer.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

Based on the number of times the employer spoke to the claimant about reading script exactly as it was written, the claimant knew or should have known that the employer strictly enforced this policy. The last incident occurred when the claimant did not read one zero from an account number. Based on the employer's policy, the facts show the employer had compelling business reasons for discharging the claimant. The evidence also indicates the claimant did not intentionally fail to perform his job satisfactorily. Even though the employer gave the claimant a number of warnings about this problem, the facts do not establish that the claimant was so careless or negligent in performing his job that his conduct amounts to work-connected misconduct. Therefore, the claimant is qualified to receive unemployment insurance benefits.

The wage credits the claimant earned from November 22, 2004 through January 31, 2005, are not in the claimant's base period. During the claimant's current benefit, the employer's account will not be charged based on wage credits the claimant earned during this time.

DECISION:

The representative's March 8, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of February 6, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged based on wage credits the claimant earned since November 22, 2004.

dlw/sc