

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

DAVID L CARR  
P O BOX 192  
REDFIELD IA 50233

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

Appeal Number: 04A-UI-02103-C  
OC: 01/11/04 R: 02  
Claimant: Appellant (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.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

David Carr filed an appeal from a representative's decision dated February 19, 2004, reference 02, which denied benefits based on his separation from Access Direct Telemarketing, Inc. (Access). After due notice was issued, a hearing was held on March 22, 2004 in Des Moines, Iowa. Mr. Carr participated personally. The employer participated by William Handy, Program Manager, and was represented by Alyce Smolsky of Talx UC Express. Exhibits One through Five 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: Mr. Carr was employed by Access from February 24, 2002 until September 2, 2003 as a full-time telephone sales representative. He was discharged because of his attendance.

Mr. Carr received a written warning on April 2, 2003 because he had been late three times during March. He had also been absent one day and had left early on one occasion. He left early on April 8 and was absent on April 9. As a result, he received another warning on April 17. An additional absence on April 30 caused Mr. Carr to receive another warning on May 8. He received a fourth warning on June 12 because he was late on June 10. He was also late on August 20 and August 21. On August 28, Mr. Carr was allowed to use paid time off to cover his absence. On August 29, he failed to report his absence until 30 minutes after the start of his shift. As a result of this final absence, he was notified of his discharge on September 2. Attendance was the sole reason for the discharge.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Carr 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). An individual who was discharged because of attendance is disqualified from receiving job insurance benefits if he 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. Tardiness in reporting to work is considered a limited absence from work.

The occasions on which Mr. Carr left work early are considered excused absences as he had permission from a supervisor to leave. With the exception of August 29, the employer failed to establish that any of his absences of a full day should be unexcused. Without knowing the reason for an absence, the administrative law judge cannot conclude that it was unexcused.

Mr. Carr was late on six occasions from March 7 through August 21, a period of approximately five months. The administrative law judge considers this excessive. He had been warned that his attendance, including his tardiness, was jeopardizing his continued employment. In spite of multiple warnings, Mr. Carr continued to accumulate occasions of tardiness. His discharge was triggered by his unexcused absence of August 29. Although the absence may have been for reasonable cause, illness, it was not timely reported to the employer.

After considering all of the evidence, the administrative law judge concludes that the employer has satisfied its burden of proving that Mr. Carr was discharged for excessive unexcused absenteeism. Accordingly, he is disqualified from receiving job insurance benefits.

**DECISION:**

The representative's decision dated February 19, 2004, reference 02, is hereby affirmed. Mr. Carr was discharged for disqualifying misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/