

**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**

**KRISTIN L BALLARD
725 EMERALD ST APT D9
IOWA CITY IA 52246**

**ACCESS DIRECT TELEMARKETING INC
c/o JOHNSON & ASSOCIATES
PO BOX 6007
OMAHA NE 68106-6007**

**Appeal Number: 05A-UI-01908-H2T
OC: 04-04-04 R: 03
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, 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/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 15, 2005, reference 08, decision that denied benefits. After due notice was issued, a hearing was held on March 10, 2005. The claimant did participate. The employer did participate through Heather Campbell, Center Manager, and was represented by Suzanna Ettrich of Johnson & Associates. Employer's Exhibits One and Employer's Two were received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a telephone service representative part-time beginning November 29, 2004 through January 14, 2005 when she was discharged. On January 14, 2005, the claimant was speaking with a customer who had called in to cancel a credit protection

service on his and his wife's account. The claimant had been instructed that when a customer wanted to cancel, she was only to respond twice to their request to cancel the service. The claimant responded 17 times to the customer's request to cancel the service before the customer finally hung up on her because he was so frustrated with the claimant's refusal to cancel his account protection. The phone call lasted approximately 40 minutes and was being monitored by the claimant's supervisor, Erica Keller. During the phone call, Ms. Keller went out on the floor and specifically told the claimant to cancel the credit protection as the customer had repeatedly asked and to exit the call. The claimant did not exit that call even after having been specifically instructed to do so by her supervisor. Having heard the call, it is clear that the customer asked repeatedly to cancel the credit protection and the claimant just ignored his request. The claimant also ignored the order from her supervisor to exit the phone call. At hearing, the claimant admitted she had been trained on only responding two times before allowing the customer to cancel the product. The claimant violated the employer's rules for responding to a customer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
 - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

- a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. Endicott v. IDJS, 367 N.W.2d 300 (Iowa App. 1985).

The recording of the call makes clear that the customer asked many times to have the credit protection from his account dropped. The claimant refused to do that for the customer. She admits she had been trained that she was only to respond twice to a request to cancel. The employer's records indicate she responded many more times than twice in contravention of the training she had received. Even when specifically told to the end call, the claimant persisted. The claimant placed the employer in jeopardy of losing a client based on how she responded to this one phone call. The claimant's actions constitute sufficient misconduct to disqualify her from receiving unemployment insurance benefits. Benefits are denied.

DECISION:

The February 15, 2005, reference 08, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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