

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

SHAWN BABBERL

Claimant

APPEAL NO. 06A-UI-10193-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACCESS DIRECT TELEMARKING INC

Employer

**OC: 09/17/06 R: 02
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct

Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

Access Direct Marketing, Inc., filed a timely appeal from a representative's decision dated October 9, 2006, reference 01, which allowed benefits without disqualification, finding that the claimant had been dismissed under nondisqualifying circumstances. After due notice was issued, a telephone conference hearing was conducted from Des Moines, Iowa, on November 1, 2006. Although duly notified, the claimant did not participate. Participating on behalf of the employer was Mr. Mike Sloan, Hearing Representative. Participating as witnesses were Brenda Neff and Mark Grego. Employer's Exhibits One through Eight were received into evidence.

ISSUES:

At issue in this matter is whether Mr. Babberl was separated from employment for any disqualifying reason. At issue in this matter is whether Mr. Babberl received an overpayment of unemployment insurance benefits.

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. Babberl was employed by Access Direct Marketing, Inc., from January 10, 2005 until September 13, 2006, as a telephone sales representative. The claimant was paid by the hour plus attendance bonuses. The claimant was discharged for a violation of the employer's rules.

On September 13, 2006, it was determined that Mr. Babberl had misdispositioned a telephone call that had been made on behalf of a client. Company policy requires that telephone sales representatives categorize or "disposition" each call on company logs so that the company and its clients can review what had occurred on each call. Specific codes are given to telesales representatives to reflect what had occurred during the telephone sales call. Although the call in question was rejected by the recipient who hung up the phone on Mr. Babberl, Mr. Babberl nevertheless dispositioned the call with a code indicating that the recipient had desired to be recalled in a one-month period.

A decision was made to terminate Mr. Babberl as the claimant had received extensive training in the disposition of calls and had demonstrated the ability to do so. The claimant had also been specifically warned for the same infraction in April 2005 and on January 12, 2006. Mr. Babberl knew that his employment was in jeopardy if he again intentionally misdispositioned a call. The employer believed the claimant was intentionally dispositioning calls to receive sales incentives and higher sales statistics within the company. The employer considers the breach to be a serious violation because it jeopardizes contracts with company clients.

REASONING AND CONCLUSIONS OF LAW:

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 evidence in the record establishes that Mr. Babberl was discharged for intentionally falsifying the disposition of a sales call after specifically being warned by the company. Mr. Babberl had demonstrated the ability to adequately perform the duties of his job and understood that intentional misdisposition of a call would result in his immediate termination from employment. On the day in question the claimant was monitored and the employer reasonably concluded, based upon Mr. Babberl's actions, that he was intentionally violating a company policy. The claimant's conduct jeopardized the company's contract with its clients and was a violation of company policy and its specific warnings that had been given to Mr. Babberl in the past.

Based upon the additional evidence in the record it is the opinion of the administrative law judge that the employer has sustained its burden of proof in showing that the claimant's discharge took place for intentional disqualifying misconduct.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has been overpaid unemployment insurance benefits in the amount of \$470.00 pursuant to the Iowa Code section 96.3-7 as the decision that allowed benefits has been reversed.

DECISION:

The representative's decision dated October 9, 2006, reference 01, is hereby reversed. The claimant was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and has been paid wages for insured work equal to ten times his weekly job insurance benefit amount, providing he satisfies all other conditions of eligibility. The claimant has been overpaid unemployment insurance benefits in the amount of \$470.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

cs/pjs