

**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**

**AMANDA CARPENTER
1606 NW 2ND ST APT 2
ANKENY IA 50023-2353**

**ACCESS DIRECT TELEMARKETING INC
C/o JOHNSON & ASSOCIATES
PO BOX 6007
OMAHA NE 68106-0007**

**Appeal Number: 06A-UI-02800-ET
OC: 02-05-06 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/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 27, 2006, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 18, 2006. The claimant participated in the hearing. Dennis Dohrman, Program Manager; Gentry Cox, Administrative Assistant; and Alice Smolsky, Employer Representative, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time telephone service representative for Access Direct Telemarketing from July 22, 2002 to February 8, 2006. She was scheduled to work 8:00 a.m. to 4:30 p.m. On February 6, 2006, the claimant arrived at 12:20 p.m. but did not call to report her absence until 9:00 a.m. On February 7, 2006, the claimant called in around 10:00 a.m. and stated she would not be in that day but the employer's records indicate she said she would be in later. On February 8, 2006, the claimant arrived at 12:25 p.m. without calling in to report she would be late. The claimant was warned about her attendance January 10 and January 31, 2006. She testified that it was common practice for employees to not call if they were going to be there prior to the second half of the day. On February 6, 2006, her supervisor signed a personal time off (PTO) form covering her time off that morning. On February 7, 2006, he told her she may not be able to use her PTO when she called to report her illness because the policy changed February 1, 2006, and employees were now required to request PTO one week in advance. The employer terminated the claimant's employment February 8, 2006, after she arrived at 12:25 p.m. without calling in earlier.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 employer has the burden of proving disqualifying job misconduct. 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. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The claimant testified it was common for employees to report for work after their start time without calling the employer and use PTO to cover their absence and the administrative law judge finds her testimony credible. While the employer's policy changed February 1, 2006, it not only failed to warn the claimant that her absence February 6, 2006, violated the new policy but her supervisor also signed her PTO form. Consequently, the administrative law judge concludes the claimant's actions do not rise to the level of intentional misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The February 27, 2006, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/kkf