

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

JOHN Q REMSTER
713 N 4TH AVE
MARSHALLTOWN IA 50158

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

Appeal Number: 04A-UI-02042-DWT
OC 01/25/04 R 02
Claimant: Respondent (2)

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 are 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
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Access Direct Telemarketing, Inc. (employer) appealed a representative's February 17, 2004 decision (reference 01) that concluded John Q. Remster (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 March 15, 2004. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Lynn Corbeil, an attorney at law, appeared on the employer's behalf with witnesses, Mark Grego, Myra Klein, Chris Netolicky and Sara Sheehy. During the hearing, Employer's Exhibits One through Five were offered and admitted as evidence. Based on the evidence, the arguments of the

employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on January 7, 2002. He worked as a full time telephone service representative. Greco was his supervisor.

During his employment, the employer monitored some of the claimant's calls to make sure he was doing his job correctly. When the claimant was working on selling Wall Street Journal subscriptions, employer's quality monitors noticed the claimant made mention of a trial subscription when he talked to potential subscribers. This was noticed during the November 5, December 22 and 29, 2003, and January 4, 2004 monitored calls. The employer talked to the claimant about this because any suggestion of a trial subscription was not on the scripted flow chart that Wall Street Journal had previously authorized. The employer reminded the claimant to follow the script because he was selling subscriptions to the Wall Street Journal for their client.

On January 22, 2004, Klein, the Wall Street Journal account manager, monitored the claimant's calls. She heard the claimant make a remark about canceling a customer's subscription in 30 days. Klein reported to Greco what she heard the claimant say.

When the employer told the claimant about Klein's report, the claimant admitted he went on-line and cancelled a customer's subscription that the claimant had been credited for selling 30 days earlier. To cancel a subscription, the claimant had to obtain personal information about a customer. The employer does not allow a telephone service representative to obtain any personal information from a "lead."

Even if a customer orders a subscription for 30 days and asks that it be cancelled at the end of the 30 days, the employer requires employees to tell the customer that the customer must do this, the claimant cannot. On January 22, 2004, the claimant indicated he had done this before, but the employer had no knowledge of him doing anything like this until January 22, 2004.

On January 22, 2004, the employer discharged the claimant for canceling a customer's subscription he had sold just 30 days earlier. The employer considered this to be the equivalent of falsifying a sale. More importantly, the employer prohibits employees from obtaining any personal information from a lead. Once a customer has ordered a subscription that is the end of any contact the employer and its employees has with the customer.

The claimant established a claim for unemployment insurance benefits during the week of January 25, 2002. The claimant filed claims for the weeks ending January 31 through February 24 2004. He received a total of \$935.00 in benefits during this week.

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. 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).

The claimant knew or should have known that neither Wall Street Journal nor the employer allowed him to offer any type of trial subscription to potential subscribers. The script the claimant had been told to follow does not mention anything about a trial subscription. Since November, the claimant had been talked to at least four times about his monitored calls and that his interference with a subscription could be on a trial basis and was not permitted by the employer or Wall Street Journal.

On January 22, the employer learned the claimant had actually obtained personal information about a customer, which the employer prohibits, and actually cancelled a subscription order for a customer that he had sold to just 30 days earlier. The claimant intentionally violated the employer's rules and disregarded the employer's repeated instructions about his inappropriate use of a trial subscription. The claimant committed work-connected misconduct. As of January 25, 2004, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending January 31 through February 24, 2004. He has been overpaid a total of \$935.00 he received for these weeks.

DECISION:

The representative's February 17, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of January 25, 2004. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending January 31 through February 24, 2004. He has been overpaid \$935.00 in benefits he received for these weeks.

dlw/kjf