

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

KEYETTE K STAR
1065 – 21ST ST #8
DES MOINES IA 50314

ACCESS DIRECT TELEMARKETING INC
c/o TALX UC EXPRESS
PO BOX 6007
OMAHA NE 68106-6007

Appeal Number: 05A-UI-00377-CT
OC: 12/12/04 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, 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 for Misconduct

STATEMENT OF THE CASE:

Keyette Star filed an appeal from a representative's decision dated January 4, 2005, reference 01, which denied benefits based on her separation from Access Direct Telemarketing, Inc. (Access). After due notice was issued, a hearing was held by telephone on January 26, 2005. The employer participated by Jason Eischeid, Program Manager, and Mary Sell, Senior Account Manager. The employer was represented by Pamela Bloch of TALX UC eXpress. Ms. Star did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Star was employed by Access from March 18, 2002 until December 10, 2004 as a full-time telephone sales representative. She was discharged after a customer complained of her unprofessionalism, conduct which included the use of profanity.

On December 9, the employer's automatic dialer directed a call to Ms. Star. The customer said he was not interested in the product being offered and hung up. Ms. Star noted the customer's telephone number from the computer screen and then went to another telephone and called the customer back. She began swearing at the customer for having hung up on her. She referred to the customer as "punk ass" and "bitch ass." The customer recognized the voice as the person who had initially called him. When the customer again hung up, Ms. Star called back and again swore at him. The customer hung up again and a third call was placed to him. On the third call, Ms. Star did not say anything. The employer's information technology personnel were able to determine that the original call to the customer had been routed to Ms. Star because her user identification number was noted for the call. The subsequent calls were traced to her because they were made from a telephone just down the line from where the original call had been received. There were only a few telemarketers working in the room at the time of the incident.

The employer's written policies, of which Ms. Star was aware, prohibit the use of profanity. She had not previously been warned about using profanity. As a result of the customer complaint on December 9, Ms. Star was discharged on December 10, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Star 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. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). For reasons which follow, the administrative law judge concludes that the employer has satisfied its burden of proof. A customer complained that he was called back three times after initially declining an offer from an Access telemarketer. The customer identified the voice from the subsequent calls as having been the same person with whom he had initially spoken. The employer was able to determine that the customer had initially spoken to Ms. Star. Ms. Star called the customer back to berate him for having hung up on her. She called not once, but three times, and swore at the customer on two of the return calls.

Ms. Star had worked as a telemarketer for over two years. There is no doubt but that she had had customers hang up on her during that time frame. The administrative law judge believes she knew it was inappropriate to call the customers back and swear at them for hanging up. Her conduct had the potential of jeopardizing Access's relationship with its client as the client may have been disinclined to continue business with an entity where employees are allowed to verbally abuse customers. Inasmuch as Ms. Star's conduct was clearly contrary to the employer's interests and standards, it is concluded that misconduct has been established and benefits are denied.

DECISION:

The representative's decision dated January 4, 2005, reference 01, is hereby affirmed. Ms. Star was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/pjs