

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROL S VAN DE POL
Claimant

APPEAL NO. 08A-UI-01711-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACCESS DIRECT TELEMARKETING INC
Employer

**OC: 01/20/08 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated February 14, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 5, 2008. The claimant participated. The employer participated by Alyce Smolsky, Hearing Representative, and Witnesses Mr. Courtney Howard and Ms. Kim Merek. Exhibits One through Five were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for intentional disqualifying misconduct in connection with her work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from January 8, 2007 until January 23, 2008 when she was discharged for unsatisfactory work performance. Ms. Van De Pol was employed as a full-time tele sales representative and was paid by the hour.

The claimant was discharged when a review of one or more telephone sales calls showed that the claimant was not following all required procedures. The claimant had neglected to give one customer a total amount and had neglected to obtain necessary authorization. The claimant had been warned before for other failures in handling calls. On the day in question the claimant was being rushed by the supervisors to take additional calls due to a heavy call load. The claimant was attempting to follow computer prompted questioning but neglected to follow all the procedures required by the company and its clients. In an effort to save her employment, the claimant requested a transfer to different work. The claimant nonetheless was discharged from her employment.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the totality of the evidence in the record that the claimant's failure to follow the employer's expectations was not based upon an intentional disregard for the employer's interests or standards of behavior but because the claimant did not possess the skills or ability to adequately perform the duties necessary to her job under the circumstances on or about January 23, 2008. The evidence establishes that on that day business conditions were rushed and that tele sales representatives were being urged to speed up calls to handle extra volume. After considering the testimony of the claimant, the administrative law judge concludes that the claimant's failures were not due to intentional disqualifying misconduct but because the claimant was unable to perform at the level of capability expected by the employer. Unsatisfactory work performance due to lack of ability or other circumstances beyond the claimant's control cannot be considered to be disqualifying misconduct in connection with the work.

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.

For the reasons stated herein, the administrative law judge concludes that the claimant was discharged under non disqualifying conditions. While the decision to terminate Ms. Van De Pol may have been a sound decision from a management viewpoint, her discharge was not for intentional misconduct.

DECISION:

The representative's decision dated February 14, 2008, reference 01, is hereby affirmed. The claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs