

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

SHALLA S COLE
2008 E 4TH ST
WATERLOO IA 50703

ACCESS DIRECT TELEMARKETING INC
% TALX UC EXPRESS
P O BOX 6007
OMAHA NE 68106-6007

Appeal Number: 04A-UI-04518-CT
OC: 03/28/04 R: 03
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 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
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Access Direct Telemarketing, Inc. filed an appeal from a representative's decision dated April 13, 2004, reference 01, which held that no disqualification would be imposed regarding Shalla Cole's separation from employment. After due notice was issued, a hearing was held by telephone on May 13, 2004. Ms. Cole participated personally and offered additional testimony from Tia Cole. The employer participated by Deshannon Brissey, Acting Center Manager, and Ibrahim Karavdic, Quality Assurance Representative. The employer was represented by Peg Heenan, Attorney at Law.

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. Cole was employed by Access Direct from May 27, 2003 until March 29, 2004. She worked approximately 28 hours each week as a telephone sales representative. She was discharged for using profanity on the calling floor.

On March 29, Ibrahim Karavdic and another individual had been monitoring calls and had the speaker on. They heard Ms. Cole on a personal telephone call being made from another employee's work station. They were not paying much attention to the call until they heard the use of profanity. Ms. Cole was overheard saying "you bitch, fuck you, you bitch." Mr. Karavdic was able to identify Ms. Cole's voice because he had monitored her on work-related calls on a number of occasions prior to March 29. Because the personal call was being made on the calling floor, there was the potential for Ms. Cole's language to be heard by customers who may have been on the telephone with other sales representatives. After the matter was reported to management, Ms. Cole was discharged.

Ms. Cole has received a total of \$1,236.00 in job insurance benefits since filing her claim effective March 28, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Cole 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 in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Cole was discharged for using profanity in an area where she could have been overheard by customers. She knew or should have known that such conduct was contrary to the employer's standards and interests. The administrative law judge concludes that, under the circumstances of Ms. Cole's employment, her use of profanity constituted a substantial disregard of the standards the employer had the right to expect. Misconduct has been alleged and misconduct has been established by the evidence. Accordingly, benefits are denied.

Ms. Cole has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code Section 96.3(7).

DECISION:

The representative's decision dated April 13, 2004, reference 01, is hereby reversed. Ms. Cole 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. Ms. Cole has been overpaid \$1,236.00 in job insurance benefits.

cfc/s