

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRITTANY SMITH**

Claimant

**APPEAL NO: 07A-UI-03148-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACCESS DIRECT TELEMARKETING INC**

Employer

**OC: 03-04-07 R: 03  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 23, 2007, 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 12, 2007. The claimant participated in the hearing. David Coveney, Center Manager; Kate Lemaster, Quality Assurance Supervisor; and Alyce Smolsky, Employer Representative; participated in the hearing on behalf of the employer. Employer's Exhibits One through Four were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**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 May 29, 2006 to January 30, 2007. On December 18, 2006, she received a written warning for "not gathering preliminary information, not giving a presentation, using improper holding procedures and not handling a call that she was capable of handling" (Employer's Exhibit One). That call resulted in a 55 percent monitoring score and her fifth alert form which is issued if a call scores below 80 percent (Employer's Exhibit One). On December 25, 2006, she received a final written warning for "referring a customer to the wrong department to resolve their issues, presenting a negative image of DTV by stating other departments can transfer but we can not, and not utilizing Doris to give correct information" (Employer's Exhibit Two). The warning further stated that was the claimant's fifth alert and was her final written warning for quality alerts. "Failure to hit quality expectations may result in further disciplinary action up to and including termination" (Employer's Exhibit Two). On December 30, 2006, the claimant received another final written warning after she was "heard not selling the protection plan, agreeing with the customer's incorrect information, and not following proper hold procedure" which resulted in a 70 percent score and another quality alert (Employer's Exhibit Three). That warning also stated that any further incidents could result in

termination. During a call on January 29, 2007, the claimant failed to ask for the customer's name, e-mail address, and try to make the sale after the first "no," or get the customer's social security number for a credit check. She also told the customer he would get a \$10.00 discount and did not look up the prices to give a quote on a price including local channels. The employer terminated the claimant's employment January 30, 2007, for failing to follow policy and procedure (Employer's Exhibit Four).

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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 misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant testified she did not know her job was in jeopardy she received several alert forms and written warnings regarding her performance but continued to repeatedly make the same errors. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The March 23, 2007, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,040.00.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs