

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

JEREMY T GETTA
624 S SUMMIT ST
IOWA CITY IA 52245

ACCESS DIRECT TELEMARKETING INC
c/o JOHNSON AND ASSOCIATES
PO BOX 6007
OMAHA NE 68106-0007

Appeal Number: 04A-UI-07828-HT
OC: 06/20/04 R: 03
Claimant: Respondent (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

STATEMENT OF THE CASE:

The employer, Access Direct, filed an appeal from a decision dated July 15, 2004, reference 01. The decision allowed benefits to the claimant, Jeremy Getta. After due notice was issued a hearing was held by telephone conference call on August 11, 2004. The claimant participated on his own behalf. The employer participated by General Manager Heather Campbell and was represented by Johnson and Associates in the person of Dawn Fox.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jeremy Getta was employed by Access Direct from March 24, 2003 until June 25, 2004. He was a full-time TSR.

On June 23, 2004, the claimant received a call from a customer, requesting cancellation of two accounts. The claimant only closed one account. During the call, he had been aggressive, talking over the customer and ignoring her continued requests to close both accounts. When she finally agreed to allow him to send her some "rebates" for one account, which meant that account would not be closed immediately. However, he did not make that clear to her, he only agreed to send her the rebate and closed one account.

The employer was concerned about the conduct because the customer had not been specifically notified only one account would be closed. In addition, the claimant's aggressiveness was considered "rude" and the customer could have complained to the client company, causing Access Direct to lose that business account.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is not.

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 claimant was discharged for one incident. The employer considered the incident to be serious enough to have violated the rules and policies regarding the handling of customer accounts. There was no evidence of anything other than aggressive selling, which had previously been encouraged on the part of the TSR. He was never warned his selling technique was too aggressive or rude. While the employer may have been legitimately concerned about customer complaints, there is no evidence of any complaint having been made regarding Mr. Getta in this case or in any prior case. This appears to be, at most, a one-time error in judgment. Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Newman v. IDJS, 351 N.W.2d 806 (Iowa App. 1984).

DECISION:

The representative's decision of July 15, 2004, reference 01, is affirmed. Jeremy Getta is qualified for benefits provided he is otherwise eligible.

bgh/kjf