

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

BEAU A HEATON
APT 10
232 WELCH AVE
AMES IA 50014

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

Appeal Number: 06O-UI-00016-HT
OC: 09/18/05 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

STATEMENT OF THE CASE:

The claimant, Beau Heaton, filed an appeal from a decision dated October 3, 2005, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on January 18, 2006. The claimant participated on his own behalf. The employer, Access Direct, participated by Center Manager Ernie Seeman and was represented by TALX in the person of Jessica Meyer. Exhibits One and Two were admitted into the record.

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: Beau Heaton was employed by Access Direct from

September 8, 2003 until September 12, 2005. He was a full-time telephone sales representative.

The claimant had received five written and documented verbal warnings from May 2004 through September 1, 2005, regarding violations of company policies in regards to unprofessional interaction with customers. On September 12, 2005, the claimant was being randomly monitored by quality control. On a call to a customer he did not use "transitional phrases" when the customer had indicated he was not interested. Instead Mr. Heaton asked "why?" or "why not" or "why is that?" He told the employer he was attempting to get more information from the customer about why the product was being declined so he could rebut. However, company policy does call for the TSR to end the call after two refusals by the customer.

Center Manager Ernie Seeman was advised of the incident by quality control and he listened to the tape along with Program Manager Kelly Woods. Mr. Heaton was brought into the office and he also listened to the tape. The employer has a zero tolerance policy regarding "badgering" customers. Mr. Heaton did not feel he had been badgering but did admit the customer's refusals were not giving him enough information to rebut, however, he kept asking why the product was being refused.

The employer acknowledged the claimant would not have been discharged for this incident alone but the prior disciplinary actions were taken into consideration. The employer's client sometimes monitors calls itself and has "seed customers" in the call list who would report any problems directly to the client. Violations of the policies established by the client could lead to the client removing its business from Access Direct.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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 had received warnings, including final written warnings, and knew the employer strictly enforced the policies and procedures regarding interactions with customers. In spite of the warnings and the policies, the claimant did not use appropriate transitional phrases and did not end the call after the customer had twice indicated he was not interested in the product. The claimant's assertion he was only trying to get more information about why the customer did not want the product so he could rebut does not stand up to close scrutiny. The customer was not giving sufficient information for a rebuttal in spite of several requests for more information.

The claimant jeopardized not only his own job but the employer's account with this client by the inappropriate interaction with a potential customer. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of October 3, 2005, reference 01, is affirmed. Beau Heaton is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/kjw