

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

ELIZABETH D THORNTON  
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DES MOINES IA 50316

ACCESS DIRECT TELEMARKETING INC  
c/o TALX – JOHNSON & ASSOC  
PO BOX 6007  
OMAHA NE 68106 0007

Appeal Number: 04A-UI-12519-DWT  
OC: 10/17/04 R: 02  
Claimant: Appellant (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, 4<sup>th</sup> 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 are 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Elizabeth D. Thornton (claimant) appealed a representative's November 10, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Access Direct Telemarketing, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 13, 2004. The claimant participated in the hearing. The employer informed the Appeals Section the employer would not be participating in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

#### FINDINGS OF FACT:

The claimant started working for the employer on May 18, 2004. The claimant worked as a full-time telemarketing salesperson. Her supervisor was Daniel Short. The employer informed the claimant she would be discharged if she accumulated four attendance points. Also, for an absence to be excused, the employer required a two-week advance notice that an employee had a scheduled doctor's appointment. If the employee did not give the employer two weeks notice, the employee received an attendance point.

In August 2004, the claimant received an attendance point because a specialist had an unexpected opening and the claimant did not give the employer two weeks advance notice about this appointment. During the last two weeks of her employment, the claimant received a number of attendance points. She received points because she stayed home with a sick child, she was a few minutes late for work, and she had a doctor's appointment. When the claimant accumulated 3.5 points, the employer warned the claimant that if she accumulated any more points, she would be discharged.

On October 19, the claimant's husband was out of town and her children were in school. After the claimant was on her way to work, she realized she had locked her children out of the house. Even though she was on her way to work, she turned around so her children could get in after school. The claimant called to let the employer know she would be a few minutes late for work. The claimant was three minutes late for work. The employer discharged her on October 19, 2004 because she had accumulated four attendance points after she was late for work on October 19.

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8):

The employer may have had compelling business reasons for discharging the claimant after she accumulated four attendance points. The claimant's most recent attendance point occurred when she was three minutes late for work on October 19. The evidence establishes the claimant notified the employer she would be a few minutes late for work. The facts also show the claimant was late on October 19 because of unexpected situation, which amounts to a reasonable ground for being late. The facts do not establish the claimant intentionally disregarded the employer's interests when she did not work as scheduled. The facts do not establish the claimant committed a current act of work-connected misconduct. Therefore, as of October 17, 2004, the claimant is qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's November 10, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of October 17, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirement. The employer's account may be charged for benefits paid to the claimant.

dlw/b