

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

JODY E GASCA
108 N 9TH ST
MARSHALLTOWN IA 50158

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

Appeal Number: 04A-UI-09613-AT
OC: 08-08-04 R: 02
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
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

Access Direct Telemarketing filed a timely appeal from an unemployment insurance decision dated August 30, 2004, reference 01, which allowed benefits to Jody E. Gasca. After due notice was issued, a telephone hearing was held October 14, 2004 with Ms. Gasca participating. Program Manager Nate Bradbury testified for the employer, which was represented by Ann Mangiameli of Johnson & Associates. Documents faxed by the employer to the administrative law judge on the morning of the hearing were not admitted into evidence because copies had not been provided to the claimant.

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: Jody E. Gasca was employed as a telephone sales representative by Access Direct Telemarketing from February 15, 1999 until she was discharged on August 9, 2004 for falsifying a sale. On August 5, 2004, Ms. Gasca individually dialed the extension of a co-worker at the employer's place of business. The co-worker pretended to be a representative of a potential client wishing to subscribe to a periodical whose sales were being handled by Ms. Gasca and her team. The co-worker maintained the fiction when speaking to a verification supervisor after Ms. Gasca left the phone.

This matter came to the attention of management, which pulled the outgoing calls from each position at the center. The investigation revealed three calls by Ms. Gasca to the co-worker's number on August 5, 2004, the last of which resulted in the fraudulent sale.

Ms. Gasca has received unemployment insurance benefits since filing a claim effective August 8, 2004.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Gasca was discharged for misconduct in connection with her work. It does.

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).

Although Ms. Gasca denied making the call, she admitted knowing the co-worker who pretended to be the customer. This evidence coupled with the results of the investigation as related by Mr. Bradbury is sufficient to establish that Ms. Gasca knowingly and willfully falsified a sale. Benefits are withheld.

Ms. Gasca has received unemployment insurance benefits to which she is not entitled. They must be recovered in accordance with the provisions of Iowa Code section 96.3-7.

DECISION:

The unemployment insurance decision dated August 30, 2004, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. She has been overpaid by \$3,068.00.

pjs/tjc