

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK A DIXON
Claimant

APPEAL NO: 07A-UI-06827-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACCESS DIRECT TELEMARKETING INC
Employer

**OC: 06/10/07 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Mark A. Dixon (claimant) appealed a representative's July 5, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment after a separation from employment from Access Direct Telemarketing, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 30, 2007. The claimant participated in the hearing and was represented by D. Ray Walton, attorney at law. During the hearing, Exhibit A-1, a statement from the employer's representative noting the employer's decision not to participate in the hearing, was entered into evidence. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 16, 2006. He worked full time as a supervisor in the employer's Cedar Falls, Iowa call center. His last day of work was June 8, 2007. The employer discharged him on that date. The reason asserted for the discharge was supposedly causing disturbance with subordinates and making negative comments about the center manager, as well as going behind the center manager's back on an internal complaint.

The claimant denied causing any disturbance or making any negative comments about the center manager. He acknowledged that he had brought a complaint about an intermediate supervisor to the center manager in approximately April and the center manager took no action regarding the intermediate supervisor; the claimant then followed the employer's complaint procedure by reporting his concern to the human resources department, which the center manager then viewed as going behind his back. The claimant had received no prior disciplinary action.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

Iowa Code § 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.

The focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or

- b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
- 2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 - 1. The employer's interest, or
 - 2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is supposedly causing a disturbance and making negative comments about the center manager. However, the claimant, under oath, denied these allegations. No witness was available at the hearing to provide testimony to the contrary under oath and subject to cross-examination. The administrative law judge concludes that the claimant's testimony is more credible. Following the employer's internal complaint procedure is also not misconduct. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's July 5, 2007 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs