

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONNA K RUDNICKI
Claimant

APPEAL NO. 10A-UI-08001-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**UNITED STATES CELLULAR
CORPORATION**
Employer

OC: 09/20/09
Claimant: Respondent (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 24, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 20, 2010. Claimant participated. Paula Rosenbaum, Associate Relations Representative, represented the employer. Exhibit One was received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Donna Rudnicki was employed by U.S. Cellular as a full-time customer service representative from February 1, 2010 until May 1, 2010, when Christopher Cusamono, Customer Services Coach, discharged her for violating the employer's zero-tolerance customer privacy policy. Mr. Cusamono was Ms. Rudnicki's immediate supervisor. Paula Rosenbaum, Associate Relations Representative, was present at the time Ms. Rudnicki was discharged.

The incident that prompted the discharge occurred on April 27, 2010. Ms. Rudnicki handled an incoming telephone call from a party requesting to know whether a particular telephone number had been "ported" to another carrier. Ms. Rudnicki assumed she was speaking with the customer to whom the number belonged and did not think the caller requested confidential information. Ms. Rudnicki did not go through the customer identity verification process to confirm she was speaking to the customer, rather than some other individual. Ms. Rudnicki had received appropriate training in the customer identity verification procedure. Ms. Rudnicki had received no other warnings or reprimands.

REASONING AND CONCLUSIONS OF LAW:

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly

be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The weight of the evidence indicates an isolated incident of negligence wherein Ms. Rudnicki failed to follow the employer's customer identify verification protocol. The weight of the evidence does not establish that Ms. Rudnicki specifically intended to violate the protocol. This isolated incident of negligence would not establish misconduct in connection with the employment that would disqualify Ms. Rudnicki for unemployment insurance benefits. Ms. Rudnicki was discharged for no disqualifying reason and is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Rudnicki.

DECISION:

The Agency representative's May 24, 2010, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css