

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AUBREY L SCHULTZ**  
Claimant

**APPEAL NO. 07A-UI-07302-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNITED STATES  
CELLULAR CORPORATION**  
Employer

**OC: 06/24/07 R: 03  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated July 19, 2007, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 14, 2007. Claimant participated personally. Employer participated by Angie Baily, Associate Relations Representative, and Maria Hallett, Customer Service Coach. Exhibit One was admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Claimant last worked for employer on June 25, 2007.

Claimant was discharged on June 25, 2007 by employer because claimant sent a dirty joke via text message using company-provided services. Claimant bought her own cell telephone but had free text messaging provided by the employer. Claimant sometime in early June 2007 sent a message something to the effect: If we were to eat cat at thanksgiving we would be eating pussy. Claimant sent the message while off duty to four coworkers. One was offended but delayed the reporting and complaint for several weeks. Employer discovered the incident on June 22, 2007. Employer then discharged claimant for inappropriate use of the cell phone services and harassment.

Claimant had prior warnings on her record. Claimant was informed of the harassment and cell telephone policy.

## 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. 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.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning harassment and cell phone use. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because this is an isolated instance of poor judgment. Claimant sent the message while off duty, which militates against a finding of an intentional policy violation. The failure of the other employee to immediately report the dirty joke also indicates that this was not considered as a blatant act of harassment. It was poor judgment on claimant's part but not an intentional violation of policy that constitutes misconduct. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated July 19, 2007, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

mdm/kjw