

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

BRANDY M DIETIKER  
967 5<sup>TH</sup> AVE APT 1  
MARION IA 52302

UNITED STATES CELLULAR  
CORPORATION  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-09590-AT  
OC: 08/01/04 R: 03  
Claimant: Respondent (1)

**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 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

United States Cellular Corporation filed a timely appeal from an unemployment insurance decision dated August 24, 2004, reference 01 which allowed benefits to Brandy M. Dietiker. After due notice was issued, a telephone hearing was held on September 29, 2004 with Ms. Dietiker participating. Human Resources Coordinator Angie Bailey and Customer Relations Supervisor Deanna Kral participated for the employer. Claimant Exhibit A and Employer Exhibit One were admitted into evidence.

#### 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: Brandy M. Dietiker worked as a customer relations representative for United States Cellular Corporation from February 21, 2000 until she was discharged on August 4, 2000. At 12:45 p.m. on August 4, 2004, Ms. Dietiker took an unscheduled five-minute break to take a personal call concerning her loss of her bank debit card. She was scheduled to take a 15-minute paid break at 1:00 p.m. Since she had taken the earlier five-minute break, Ms. Dietiker worked through her scheduled break. Customer relations representatives are given some leeway in when they actually take their breaks. The employer has no indication that any customers suffered any inconvenience because of Ms. Dietiker's action.

In early July Ms. Dietiker received a warning for low productivity, including excessive time logged off the telephone system. This had been a result of a medical condition. After the warning through the time of the discharge, Ms. Dietiker exceeded company standards relating to the percentage of her time logged on to the telephone network.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Dietiker was discharged for misconduct in connection with her work. It does not.

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).

The evidence establishes that although Ms. Dietiker took a five-minute break prior to her scheduled time, she more than repaid the employer by working through her scheduled 15-minute break. The evidence also establishes that Ms. Dietiker exceeded company standards for percentage of time logged into the telephone network for the month leading up to her discharge. Given these facts and given the employer's lack of evidence of any customer inconvenience resulting from Ms. Dietiker's action on August 4, 2004 the administrative law judge concludes that misconduct has not been established. Benefits are allowed.

DECISION:

The unemployment insurance decision dated August 24, 2004, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

kjf/b