

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW J STEARNS
Claimant

APPEAL NO. 09A-UI-02677-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**UNITED STATES
CELLULAR CORPORATION**
Employer

**Original Claim: 03/09/08
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Matthew J. Stearns filed an appeal from a representative's decision dated February 11, 2009, reference 06, which denied benefits based upon his separation from U.S. Cellular Corporation. After due notice was issued, a telephone conference hearing was scheduled for and held on March 16, 2009. Mr. Stearns participated personally. The employer participated by Kerri Cleppe, customer service manager, and Paula Rosenbaum, employee relations representative. Employer's Exhibits One through Seven were received into evidence.

ISSUE:

At issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant was employed as a customer service representative for U.S. Cellular from April 14, 2008, until January 7, 2009, when he was discharged for excessive tardiness. Mr. Stearns was employed as a full-time customer service representative working 2:30 p.m. until 11:00 p.m. five days per week. The claimant's immediate supervisor was Todd Watson.

Mr. Stearns was discharged when a review of his punctuality record for December 2008 showed that the claimant had been tardy in reporting to his workstation after lunch and break periods on numerous occasions. The claimant had been warned regarding attendance and punctuality and was aware that the employer expected customer service representatives to be back at their workstations promptly following assigned break and lunch periods. Mr. Stearns had previously had a problem with his availability for phone call percentage time but had improved his call availability percentages. The claimant, however, continued to be repeatedly late in returning from lunch and break, in violation of company policy, and was discharged when it was determined that he had failed to adhere to a performance improvement plan regarding punctuality by continuing to be late returning to his workstation.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes Mr. Stearns was discharged for misconduct sufficient to warrant a denial of unemployment insurance benefits. It does.

The evidence in the record establishes that Mr. Stearns had been warned on numerous occasions regarding attendance and punctuality and was aware of the employer's reasonable expectation that he would be at his workstation promptly after lunch and break periods. Although the claimant had improved his percentage of time available on company telephones, the claimant continued to be repeatedly tardy in returning from lunch and from breaks even though he had been warned by the employer and placed upon a performance improvement plan. Based upon the repetitive nature of his tardiness in returning from lunch and break during December 2008 after being warned, a decision was made to terminate Mr. Stearns from his employment.

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.

For the reasons stated herein, the administrative law judge concludes that the employer has sustained its burden of proof in establishing that the claimant's discharge took place under disqualifying conditions. Benefits are withheld.

DECISION:

The representative's decision dated February 11, 2009, reference 06, is affirmed. Matthew Stearns is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw