

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACEY PENNOCK
Claimant

APPEAL NO. 14A-UI-01077-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED STATES CELLULAR CORP
Employer

OC: 01/05/14
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Stacey Pennock filed a timely appeal from the January 28, 2014, reference 01, decision that disqualified her for unemployment insurance benefits. After due notice was issued, a hearing was held on February 19, 2014. Ms. Pennock participated. Larry Post represented the employer. Exhibit B 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: Stacey Pennock began working for U. S. Cellular in 2004 as a call center employee. Ms. Pennock became a part-time retail wireless consultant at the employer's Oskaloosa store from 2007 and continued in that position until January 7, 2014, when the employer discharged her from the employment. Larry Post was the Store Manager.

The final incident that triggered the discharge occurred on January 7, 2014. On that day, Ms. Pennock overheard a coworker, Amy Hull, talking to a customer about the amount of money Ms. Hull had in her purse. At the time, Mr. Hull's purse was at the Oskaloosa store in a drawer/cubby assigned to her. Ms. Pennock took about \$100.00 from Ms. Hull's wallet. The wallet was inside Ms. Hull's purse. Ms. Pennock and Ms. Hull are friends. Ms. Pennock did not ask Ms. Hull's permission to take the money or to reach into Ms. Hull's wallet or purse. Ms. Pennock did not tell Ms. Hull that she was going to remove the money from Ms. Hull's wallet or purse. When Ms. Hull realized that money had been taken from her purse while she was at work, Ms. Hull contacted Mr. Post to report the apparent theft. Ms. Hull then telephoned Ms. Pennock. At that time, Ms. Pennock told Ms. Hull that she had taken the money as a practical joke. The employer had issued reprimands to Ms. Pennock for unrelated matters and took into consideration that Ms. Pennock was on a final written warning at the time she removed the money from Ms. Hull's purse.

The employer has an employee handbook that contains a provision that prohibits “irresponsible action” that creates a risk of harm or loss to another person, another business, or the company while on company time or company premises. Ms. Pennock received a copy of the employee handbook at the time of hire.

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).

The evidence in the record establishes misconduct in connection with the final incident that triggered the discharge. Ms. Pennock went into an area of the store, the cubby/drawer, that the employer had designated as a place for Ms. Hull to keep or safeguard her personal belongings while Ms. Hull was at work. The employer reasonably expected that employees would respect the personal property of other employees by leaving that property alone. Ms. Pennock got into the cubby, a place she knew she had no right or legitimate reason to access. Ms. Pennock got into Ms. Hull's purse, a place she knew she had no right or legitimate reason to access. Ms. Pennock got into Ms. Hull's wallet, a place she knew she had no right or legitimate reason to access. Ms. Pennock removed Ms. Hull's property, a substantial amount of money, and moved it to another area of the store within Ms. Pennock's control. Taking property of another and concealing it in another location is evidence of the intent to commit theft. See Iowa Code section 714.5. Ms. Hull initially concluded, reasonably, she had likely been the victim of theft. Mr. Post reasonably concluded the same. That situation was wholly attributable to Ms. Pennock's decision to act with willful and wanton disregard of the employer's interests in safeguarding employee property at the employer's store. It makes no difference whether Ms. Pennock and/or Ms. Hull later decided to laugh off the incident. Ms. Pennock knowingly and willfully violated the standard of conduct that the employer reasonably expected of her.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Pennock was discharged for misconduct. Accordingly, Ms. Pennock is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits.

DECISION:

The Claims Deputy's January 28, 2014, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs