

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AYRON K VIVIAN
Claimant

APPEAL NO: 12A-UI-09419-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED STATES CELLULAR CORP
Employer

**OC: 07/08/12
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The employer appealed a department decision dated July 27, 2012, reference 01, that held the claimant was not discharged for misconduct on July 7, 2012, and benefits are allowed. A telephone hearing was held on August 29, 2012. The claimant participated. Brian VanDerSloot, Customer Service Coach, and Paula Rosenbaum, Associate Relations Representative, participated for the employer. Employer Exhibits 1 & 2 were received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on June 4, 2007, and last worked for the employer as a full-time CSR/Associate on July 7, 2012. She received the employer policies regarding her interaction with customers.

The employer issued claimant a written warning on February 4, 2012 for a January 20 policy violation. Claimant violated policy by giving account information to a non-authorized user/account holder. The employer issued claimant a final warning on February 10 for a January 30 policy violation. Claimant failed to properly authenticate the customer as an account holder. The warning states a further violation could lead to employment termination.

An employer representative reviewed claimant memos involving customer interaction on June 18. Claimant had changed numbers at the customer request, but the person was not an authorized account holder. The incident was reported to management on June 27. The employer discharged claimant on July 7 for a third policy infraction that included a final warning for policy violations.

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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for a current act of misconduct in connection with employment on July 7, 2012.

The employer July 7 discharge is based on a June 18 policy violation that is too remote in time and place to constitute a current act of misconduct. Claimant remained as an employee and was allowed to work for 19 days after the occurrence.

DECISION:

The department decision dated July 27, 2012, reference 01, is affirmed. The claimant was not discharged for a current act of misconduct on July 7, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs