

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BERNITA N LORIG

Claimant

APPEAL NO. 06A-UI-09543-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED STATES CELLULAR CORP

Employer

**OC: 08/20/06 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 15, 2006, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 11, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Karleene Walters participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a customer service representative (CSR) from November 2, 1998, to August 18, 2006. The claimant received a warning on June 26, 2006, that she could be terminated if she had any further policy violations.

After receiving the warning, the claimant received a 91.5 rating on a quality evaluation score for July 2006, which was below the acceptable standard. At some point after June 26, 2006, the claimant failed to transfer a call to financial services from a customer asking about making a payment arrangement, which was a violation of the employer's policy. The employer was concerned that the claimant was neglecting to enter break exceptions, which were required anytime a CSR varies from the established break schedule. There were times when the claimant forgot to enter these variances when she got busy taking calls. This was not deliberate. After the warning, there was one instance when the claimant went a dollar or two over adjustment limit in applying a credit that the customer had to an account balance.

On August 15, 2006, the claimant took a call from a customer who asked if his service would get cut off if he paid his bill the next day. The claimant researched the account and told the claimant that he would be okay if he paid the next day. The claimant did not believe at the time that the call had to be transferred to financial services, because the customer was not asking to make any payment arrangement and she was not making a payment arrangement with the customer. She believed she was providing good customer service by not transferring him to

someone else. On August 17, 2006, the claimant had made a short phone call to her supervisor about a company potluck. The supervisor believed that the claimant should have been made during a break.

The employer discharged the claimant on August 18, 2006, for the conduct set forth in the above paragraphs.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No current act of willful and substantial misconduct has been proven. At most, the evidence establishes unsatisfactory work performance.

DECISION:

The unemployment insurance decision dated September 15, 2006, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw