

**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

**PAULA R SIMMONS
726 G AVENUE
CEDAR RAPIDS IA 52405**

**UNITED STATES CELLULAR CORP
c/o FRICK UC EXPRESS
P O BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-01957-BT
OC: 01/18/04 R: 03
Claimant: Appellant (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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Paula Simmons (claimant) appealed an unemployment insurance decision dated February 13, 2004, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from United States Cellular Corporation (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 12, 2004. The claimant participated in the hearing. The employer participated through Nicole Rauch, Customer Service Manager, and Shelly Lawless, Associate Relations Manager.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time customer service representative from June 16, 1997 through January 21, 2004. She was discharged for repeated incidents of unprofessional and unacceptable behavior. A verbal warning was issued on November 28, 2001 when the claimant was rude to a customer. The claimant told the customer she had an attitude and when the customer requested to speak to a supervisor, the claimant hung up on the customer. The customer subsequently wrote a letter of complaint. The claimant received her first written warning on July 23, 2003 for a failure to verify the information, as well as a lack of courtesy to the customer. A second written warning was issued on August 15, 2003 when the claimant again failed to provide the verification information. A final written warning was issued as a result of a call on October 16, 2003 due to the poor quality of service provided to the customer. Since there were no further incidents between October 2003 and January 2004, the claimant was given an extra chance. She was issued a second final written warning on January 8, 2004 for two telephone calls with one occurring on January 6 and the other on January 8, 2004. The claimant failed to provide the required statements to the customer in one call and showed a lack of composure in the other call, while failing to resolve the customer's problem. The final incident occurred on January 21, 2004 when the claimant loudly stated on the call floor, "I'm pissed off." The comment was loud enough that three coaches heard her and were offended by it. Additionally, other associates and even customers could have heard the comment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code Section 96.5-2-a.

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 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 willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant was discharged for her repeated failure to adhere to the standards of conduct provided by the employer. She had received several warnings and knew or should have known her job was in jeopardy when she loudly uttered the statement, "I'm pissed" while on the call floor. The claimant admitted the comment was loud and considering the environment in which she worked, it was unacceptable. The claimant's continued inappropriate behavior was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated February 13, 2004, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld 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.

sdb/s