

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JILLIAN HILL
Claimant

APPEAL NO. 17A-UI-08838-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**UNITED STATES CELLULAR
CORPORATION**
Employer

OC: 07/30/17
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jillian Hill (claimant) appealed a representative's August 24, 2017, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with United States Cellular (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 18, 2017. The claimant participated personally. The employer did not wish to participate in the hearing. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 hired on January 12, 2015, as a part-time retail wireless consultant. She had access to the employer's handbook at the work site. The claimant had few issues at work until new managers were hired. The store manager was hired in approximately March 2017. The claimant's direct manager was hired in approximately April 2017. Her sales manager was hired in approximately October 2016.

The employer issued the claimant a sixty-day performance improvement plan in March 2017, for not meeting the employer's sales goals. This was the first warning the employer issued the claimant. During the sixty-day period the claimant tried her best to reach the sales goal but was unable to do so due to the market. Other employees did not meet the sales goals and were also placed on plans.

The employer extended the claimant's performance improvement plan to ninety days. On or about May 22, 2017, the supervisor's had a meeting with employees and asked for comments regarding manager's performance. The claimant was honest with the supervisors and thought the supervisors would not tell her managers what she had said. She suggested that managers listen to their employees and not disappear into the back of the house when employees have

issues. The claimant proposed managers get to know employees better. She commented that she was not growing from interactions with her managers.

The claimant met her sales goals for May 2017. On May 31, 2017, the store manager told the claimant she was terminated because she was not a good fit. The claimant suspected the supervisors told the managers about her comments.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. *Huntoon v. Iowa Department of Job Services*, 275 N.W.2d 445 (Iowa 1979). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The employer may have discharged the claimant for poor work performance and has the burden of proof to show evidence of intent. There was no evidence of intent at the hearing. The claimant's lack of sales was a result of the market. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's August 24, 2017, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs