

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CORISSA MARTI
Claimant

APPEAL NO. 11A-UI-15028-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**UNITED STATES CELLULAR
CORPORATION**
Employer

**OC: 10/02/11
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from the November 9, 2011 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on December 15, 2011. Claimant participated after the hearing had begun. The testimony to that point was summarized and claimant was provided with the opportunity to cross-examine. Employer participated through human resources associate Paula Rozenbaum and customer service coach Kaylee Davis.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a customer service representative and was separated from employment on September 15, 2011. On that date Davis reviewed ten of claimant's calls and noted that in five of them she failed to pull up customer accounts. None of the customers refused permission but Joel Sieren customer service coach told claimant while Davis was on maternity leave that she would not have to pull up customer accounts if they were calling for general information. She had been warned in writing on September 8, 2011 and was told to pull up 100 percent of them, unless the customer refuses. Claimant indicated she had been having personal problems and Davis referred her to Life Works, an employee assistance program. Davis had also coached her in mid-August 2011 about pulling up accounts, cutting off customers, and not providing full customer service. Claimant had consistently demonstrated proper account handling until August 9.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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 establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). 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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The conduct for which claimant was discharged was the result of conflicting supervisory instructions about not having to pull up accounts for customers requesting general information. Even though she had been warned to pull up 100 percent of accounts unless a customer refuses to provide the information to do so, the conflicting supervisory instructions on calls for general information negates any allegation of intent to violate instructions. Benefits are allowed.

DECISION:

The November 9, 2011 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs