

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARCUS W SCHRODER
Claimant

APPEAL NO. 07A-UI-06271-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CELLCO PARTNERSHIP
VERIZON WIRELESS**
Employer

**OC: 05/2/07 R: 02
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Cellco, filed an appeal from a decision dated June 13, 2007, reference 01. The decision allowed benefits to the claimant, Marcus Schroder. After due notice was issued a hearing was held by telephone conference call on July 10, 2007. The claimant participated on his own behalf. The employer participated by Store Manager Joseph Thunhorst, Assistant Manager Meghan Fisher and Human Resources Manager Jim Handley

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Marcus Schroder was employed by Cellco from November 23, 2005 until May 8, 2007, as a part-time sales representative. In late April 2007 Store Manager Joseph Thunhorst and District Manager Mike Killian had concerns over loss of inventory, or shrinkage, of certain items in the store. A review of the records showed that Mr. Schroder did a lot of cash refunds for merchandise which did not have the transaction number from the original receipt as required.

Assistant Manager Meghan Fisher sent out an e-mail April 30, 2007, reminding all sales representatives of the policy that any returns must have the original receipt with transaction number on it, and must be done only with a manager's approval. This policy was reiterated to Mr. Schroder directly.

On May 4, 2007, Mr. Killian interviewed the claimant at the store and asked him if he believed he was conducting himself professionally and ethically and he replied that he was. He was then asked if customers were always present when he did a refund or exchange and he said there was. He was then suspended pending investigation of two cash refunds he had recently processed. Mr. Killian said he would be reinstated and reimbursed for lost time if the

investigation revealed no fault on his behalf, but he would be discharged if it discovered any wrong doing.

Security tapes were downloaded and sent to Human Resources Manager Jim Handley for review and he witnessed two transactions done by the claimant with no customer present in the store. The refund receipts were processed without an original transaction number and did not have manager approval. On one occasion the claimant was seen taking an item from the sales display and using it to process the refund and then putting the merchandise in the return bin, and on the second occasion, no inventory item was put in the return bin after the refund was done, again without an original transaction number.

The information was relayed to Mr. Thunhorst and Mr. Killian who then discharged the claimant by phone on May 8, 2007. Mr. Schroder has received unemployment benefits since filing a claim with an effective date of May 27, 2007.

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.

The claimant was discharged for failing to process returns in accordance with company policy. He was witnessed processing a claim without a customer present and did not enter the original transaction number as required, nor have it approved by the manager. He claimed that it was a common occurrence to process refunds during times when business was slow if the refund

occurred during a busy time. However, this would not explain why no transaction number was entered along with the refund or why manager approval was not obtained.

It appears the claimant was deliberately circumventing the employer's policies for reasons of his own which contributed to the inventory shrinkage in the store. This is a loss of inventory and revenue to the employer and constitutes misconduct.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of June 13, 2007, reference 01, is reversed. Marcus Schroder is disqualified and benefits are withheld until she has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$1,369.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs