

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICKY J BARRETT
Claimant

APPEAL NO. 09A-UI-19322-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED STATES CELLULAR CORP
Employer

OC: 11/22/09
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, US Cellular, filed an appeal from a decision dated December 14, 2009, reference 01. The decision allowed benefits to the claimant, Ricky Barrett. After due notice was issued a hearing was held by telephone conference call on February 3, 2010. The claimant participated on his own behalf. The employer participated by Customer Service Coach Chrystal Miller and Associate Relations Representative Paula Rosenbaum. Exhibits One and Two were admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Ricky Barrett was employed by US Cellular from February 18, 2008 until September 15, 2009 as a full-time customer service representative. His performance with incoming calls from customers had been generally satisfactory until the beginning of 2009. The employer placed him on an “achievement plan” which outlined problem areas the employer wanted him to improve. He did noticeably improve according to his supervisor, Customer Service Coach Chrystal Miller, but then it began to decline again. In discussing these issues with Ms. Miller the claimant stated he might do better if he had some kind of “deadline” he had to meet.

On July 30, 2009, Ms. Miller placed him on a performance improvement plan, which she had already been contemplating before he made the statement about needing a “deadline” The plan covered many of the same problems as in the earlier achievement plan. Mostly it was lack of empathy with the customers and poor communication skills. The plan would be in effect for 45 days, until September 15, 2009.

Mr. Barrett was given additional training materials, he sat with trainers and coaches, received feedback and instruction and met with Ms. Miller weekly to discuss his progress. When the supervisor would ask him if he needed help with any of the areas in which he was not improving, he would just say he “needed to work on it.” He did not indicate he felt the training

was ineffective, inadequate or lacking altogether. Ms. Miller continued to monitor his calls under the same quality assessment guidelines all CSRs were to meet.

Ms. Miller had noted on the performance improvement plan the root of the claimant's problem was that he had stated he did not agree with the employer's view of call processing. She felt it was apparent he was therefore unwilling to change and it was preventing him from looking at things from the employer's, as well as the customers', points of view. He stated he had disagreed with such policies with other employers but they had always "come around to [his] way of thinking."

The employer reviewed his performance on September 14, 2009, and reviewed the evaluations of the randomly selected calls during the improvement plan time period. He did not show sufficient improvement based on the standard evaluations used on all employees. Ms. Miller notified him of the discharge on September 15, 2009.

Ricky Barrett has received unemployment benefits since filing a claim with an effective date of November 22, 2009.

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 capable of performing his job to meet the standards required by the employer. This is evidenced by his satisfactory ratings in 2008 and the fact he raised his level of performance after the March 2009 disciplinary action. It is evident the claimant had his own view of the appropriate way to handle the customer calls and was not entirely amenable to being adopting the employer's methodology without question. He had made it clear he did not agree with the call processing used by US Cellular and possibly expected it would come around to his way of thinking as others had.

In addition, if he felt the retraining steps on the employer's behalf were inadequate, he did not notify anyone of that. Instead he insisted he would have to work on it by himself. This is further evidence of the claimant's unwillingness to submit to the employer's processes and to comply with the requirements imposed. This is a violation of the duties and responsibilities the employer has the right to expect of an employee. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of December 14, 2009, reference 01, is reversed. Ricky Barrett is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css