

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARRIS L HOWE
Claimant

**UNITED STATES CELLULAR
CORPORATION**
Employer

APPEAL NO. 07A-UI-06880-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/17/07 R: 03
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

United States Cellular Corporation (employer) appealed a representative's July 2, 2007 decision (reference 01) that concluded Darris Howe (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 31, 2007. The claimant participated personally. The employer participated by Jennifer Hadenfeldt, Sales Manager, and Chad Hansen, Store Manager. The claimant offered one exhibit which was marked for identification as Exhibit A. Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

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 May 15, 2006, as a full-time retail wireless consultant. The employer had an on-line company handbook and held training sessions for the claimant. The claimant received a written warning on or about January 2007, for using inappropriate language.

On May 31, 2007, the claimant helped a woman and her three children. She was authorized on her husband's account. She wanted to renew three current lines of service and add one additional line. The claimant spoke to the husband who was the contract holder on the telephone. He agreed with his wife's request. The claimant explained that the husband had to physically enter the store and sign the contracts. The husband agreed to come in later that day. The claimant flagged the account for the husband's arrival, gave the wife copies of the contracts and the new equipment.

On June 2, 2007, the employer discovered that the claimant allowed a non-contract holder to leave the premises with equipment without the contract holder being present to sign the contract. The claimant readily admitted to his actions and did not understand he could be terminated for his actions. On June 5, 2007, the employer terminated the claimant.

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:

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not provide sufficient evidence of misconduct at the hearing. The claimant's actions constituted a single incident of carelessness. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's July 2, 2007 decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs