

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

JODI J HOUSER

Claimant,

and

UNITED STATES CELLULAR CORP

Employer.

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HEARING NUMBER: 10B-UI-08992

**EMPLOYMENT APPEAL BOARD
DECISION**

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1, 96.3-7

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The claimant, Jodi J. Houser, was employed by United States Cellular Corp. from August 17, 2009 through April 22, 2010 as a full-time customer service representative (CSR). (Tr. 2, 7) The employer issued an electronic personnel handbook for which the claimant signed in acknowledgment of receipt. (Tr. 3) The claimant received several warnings for various infractions. (Tr. 3-5) She received a final written warning on January 6, 2010 for failing to follow instructions. (Tr. 5)

On April 21, 2010, the claimant handled a call involving a customer who was upset about "...some easy edge charged on his bill..." (Tr. 6-7) The customer sought a guarantee that such charged would not show up on his next bill. (Tr. 7) In accordance with her training, the claimant told him that "...the only

way [the employer] could guarantee that [was] if all the applications were removed from [his] phone...” (Tr. 7) The customer became more aggressive and argued that that procedure had already been done; he continued to insist on being given a guarantee which the claimant was unable to give. (Tr. 7-8) Finally, when Ms. Kuper (claimant’s supervisor) approached Ms. Houser, the latter asked if she had advice on how to handle the customer. (Tr. 10) Ms. Kuper suggested she use empathy, which the claimant used in trying to calm the customer down. (Tr. 10) When the customer continued to be insistent, Ms. Houser had to eventually raise her voice over the customer who continued yelling at her. (Tr. 6, 9) The claimant had been trained not to turn such calls over to the supervisor, unless the customer expressly requested to speak with one. (Tr. 9) Ms. Houser did not believe she had the option of hanging up on the irate customer. The following day, the employer terminated Ms. Houser for raising her voice at a customer. (Tr. 6, 9)

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2009) provides:

Discharge for Misconduct. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993)).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 NW2d 661 (Iowa 2000).

Although the record reflects that the claimant received several warnings for past infractions, the final act, itself, did not rise to the legal definition of misconduct. According to the claimant's unrefuted testimony, she handled the call according to the manner in which she was trained. The difficult customer was 'unsatisfiable' in that he refused to accept the claimant's explanation for why she couldn't guarantee him what he wanted. During the midst of her conversation, Ms. Durham appropriately attempted the use of 'empathy' as directed by Ms. Kuper, however, the customer was still not appeased. Although the employer argues that she could have gone to the help desk (Tr. 11), the claimant had already taken that action when she spoke with Ms. Kuper, which unfortunately did nothing to help the claimant. It is clear that the claimant handled the call to the best of her ability. The fact that the employer overheard her raising her voice without knowing the full nature of what the claimant was struggling with does not render her behavior as "...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..." And, while the employer may have compelling business reasons to terminate the claimant, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Based on this record, we conclude that the employer failed to satisfy their burden of proof.

DECISION:

The administrative law judge's decision dated August 11, 2010 is **REVERSED**. The claimant was discharged for no disqualifying reason. Accordingly, she is allowed benefits provided she is otherwise eligible.

John A. Peno

Elizabeth L. Seiser

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

Monique F. Kuester

AMG/fnv