

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

SARAH ADAMS
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CEDAR RAPIDS IA 52402-8820

UNITED STATES CELLULAR CORP
c/o FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-07000-BT
OC: 08/28/06 R: 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96 5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

United States Cellular Corporation (employer) appealed an unemployment insurance decision dated June 21, 2006, reference 06, which held that Sarah Adams (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 1, 2006. The claimant participated in the hearing. The employer participated through Angie Bailey, Associate Relations Representative and Stephanie Simpson, Customer Service Coach.

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 employed as a full-time customer service representative from May 22, 2006 through May 26, 2006, when she was discharged for falsification of her employment application. When the claimant completed her employment application, she denied previously working for United States Cellular. She certified the information was true by signing the application. After being hired, the employer discovered the claimant had worked for the employer from May 1, 2000 through June 6, 2000 when she voluntarily quit. She was not eligible for rehire due to job abandonment so would not have been hired had she truthfully disclosed this information.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 claimant was discharged for providing false information on her employment application. When a person willfully and deliberately makes a false statement on an employment application, such falsification shall be an act of misconduct in connection with the employer. The statement need not be written and an omission of a pertinent fact would have the same effect. The falsification must be such that it does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties or result in placing the employer in jeopardy. 871 IAC 24.32(6). The Iowa Supreme Court has stated that a misrepresentation on a job application must be materially related to job performance to disqualify a claimant from receiving unemployment insurance benefits. Larson v. Employment Appeal Board, 474 N.W.2d 570, 571 (Iowa 1991). While this statement is *dicta* since the court ultimately decided Larson was discharged for incompetence not her deceit on her application, the reasoning is persuasive. The court does not define materiality but cites Independent School Dist. v. Hansen, 412 N.W.2d 320, 323 (Minn. App. 1987), which states a misrepresentation is not material if a truthful answer would not have prevented the person from being hired.

In the case herein, the evidence does establish the claimant would not have been hired if she had provided truthful and accurate information on the employment application. However, her deceit does not endanger the health, safety or morals of herself or others; does not expose the employer to legal liabilities or penalties; and does not place the employer in jeopardy. Although the claimant's false statements provide the employer sufficient justification for her discharge, her actions are insufficient to result in disqualification. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated June 21, 2006, reference 06, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

sda/cs