

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NAKIA K CLARK
Claimant

APPEAL NO. 09A-UI-06332-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**UNITED STATES
CELLULAR CORPORATION**
Employer

**Original Claim: 03/15/09
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 8, 2009, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on May 20, 2009. Claimant participated. Employer participated through Paula Rosenbaum and Alisha Binns.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a customer service representative (CSR) and was separated on March 20, 2009. On March 17, Binns received a feedback form from another associate that claimant had made changes to a customer's account and gave out information about the account without authorization or verification. Because there had been two prior unauthorized attempts to access the account, notes on the account required the customer to report to the store with a driver's license before any alterations could be made. She verified the customer but did not require them to report to the store with photo identification before issuing a \$25 credit to the account as an offset for the "turn on" fee allowed once per year. She gave no other information and did not add features to the account. The call was not recorded but she made notes on the account.

On January 13, 2009, she was warned in writing after a customer called to make a payment on the account. She verified the identity of the male customer and he asked her to speak to his sister to get payment information. He gave the phone to his sister and stood by such that claimant could hear him in the background. His sister asked if the payment would turn his phone back on and claimant replied that it would but did not give any information about past payments or any other information about the account. Binns gave her a 100 percent quality

score for the call but changed it the next week when the warning was issued alleging a customer privacy violation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). 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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. This final incident was merely an isolated incident of poor judgment in her failure to follow the special instructions even though she verified the customer. Since the incident in January was initially rated 100 percent, she did not give personal information about the account, and she spoke to the sister only in the presence of the customer, the employer has not established misconduct as to that issue. One isolated incident of misconduct does not reach the level of disqualification. Benefits are allowed.

DECISION:

The April 8, 2009, reference 01, decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw