

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELANIE MCLANE
Claimant

APPEAL NO. 08A-UI-05593-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED STATES CELLULAR CORP
Employer

**OC: 05-11-08 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 6, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 1, 2008. The claimant participated in the hearing. Paula Rosenbaum, Associate Relations Representative; Glen Mixdorf, Customer Service Coach; and Carrie Coeppe, Customer Service Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time customer service representative for United States Cellular from August 13, 2007 to May 15, 2008. The claimant worked the 2:30 p.m.-to-11:00 p.m. shift. The employer's policy requires employees to request and receive permission in advance for vacation days or the absence is considered unapproved and unexcused. As of April 19, 2008, the claimant had used all of her sick leave. On April 19, 2008, the claimant called in and used the vacation code even though she was actually ill that day and the call-in recording states that if a code is used improperly, disciplinary action could occur. On April 24, 2008, she again called in and improperly used the vacation code. On April 25, 2008, the employer spoke to her about improper use of the coding system when she called in and told her not to do it again. On April 26, 2008, the claimant again called in and used the vacation code. The employer called her to ask what was going on and the claimant sent him a text message stating she was ill and had to stay home with her child. She was off work April 27 and 28, 2008, and received a verbal warning in writing April 29, 2008, for using the code improperly. On May 7, 2008, the claimant e-mailed the employer asking for Saturday, May 10, 2008, off work because she did not have a babysitter. The employer approved her request but said she would have to use unpaid time off. The claimant refused and did not use any code when calling in May 10, 2008. As a result, the employer issued a written warning to her for failing to use the proper code when calling in to report an absence. On May 13, 2008, the claimant asked for one hour off to see her

chiropractor but because it was not prescheduled or pre-approved, it was considered an unapproved and unexcused absence. On May 14, 2008, the employer brought the claimant to the office and she indicated she understood that misuse of the time codes could result in termination. The employer terminated the claimant's employment May 15, 2008. The claimant testified she was aware of how to properly use the codes and assumed she would be disciplined for intentionally using them incorrectly but believed she would receive a final written warning before being terminated. The employer generally issues a final written warning prior to termination, but their handbook indicates the employer may skip disciplinary steps if the behavior warrants it.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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 claimant was aware of the correct way to use the call-in codes, but despite that knowledge, she repeatedly used the vacation code improperly. The employer talked to her about the situation, verbally warned her in writing, and also issued a written warning to her about her use of the vacation code, but the claimant continued to use the code incorrectly, including the day after the employer originally talked to her and told her not to do it again. While the employer did skip the final written warning, that is understandable in this case, because the claimant was

warned three times about the same behavior. Although the claimant's last absence was due to a chiropractic appointment, she did not start work until 2:30 p.m. and could have scheduled her appointment around work when she knew or should have known her job was in jeopardy. The administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The June 6, 2008, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw