

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

AIMEE D VAUPEL
506 SUNSET BLVD
ROWLEY IA 52329

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

Appeal Number: 05A-UI-03400-SWT
OC: 02/20/05 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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 18, 2005, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 20, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Angie Bailey participated in the hearing on behalf of the employer with witnesses, Matt Sampson and Chad Tyo.

FINDINGS OF FACT:

The claimant worked full time for the employer as a business-to-business associate from November 5, 2001 to February 17, 2005. The claimant was informed and understood that insubordination was grounds for discipline up to and including discharge.

Sometime around the beginning of February 2005, the employer terminated the director of the call center and two other managers. The call center director had contacted the claimant and explained to her the reasons for her discharge. The claimant had shared that information with three other employees. On February 15, 2005, the claimant asked for a meeting with her supervisors. During the meeting, the claimant discussed what the former director of the call center had shared with her and expressed concerns about whether she could continue to trust the employer's management. Her supervisors told her that they would appreciate her not speaking with other employees about the call center director's termination. The claimant agreed.

The next day, one of the three employees that the claimant had spoke to approached her and informed her that their supervisor had called all three of the employees into his office and told them not to talk about the call center director's termination. The claimant replied that she had seen the human resources representative in the supervisor's office after she had spoken to him and wondered if that had anything to do with her meeting with the supervisor. The following day, the claimant was talking to an employee while she was on break and expressed to him her lack of trust in management. It was reported to management that the claimant was continuing to create dissension among coworkers by talking about the call center manager's discharge, which was untrue. The employer discharged the claimant for insubordination on February 17, 2005, because management believed that she was continuing to talk to staff about the call center director's termination.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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 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 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. The employer has not proven that the claimant had initiated conversations with coworkers about the termination of the call center director after she had told not to on February 15, 2005.

DECISION:

The unemployment insurance decision dated March 18, 2005, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/sc