

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TINA M. OLSON
Claimant

APPEAL NO. 10A-UI-05720-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**UNITED STATES CELLULAR
CORPORATION**
Employer

**OC: 03/21/10
Claimant: Appellant (2)**

Section 96.5-2-A – Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 9, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 2, 2010. Claimant participated. Employer participated by Paula Rosenbaum, Associate Relations Representative, and Carla Clare, Customer Service Coach. The record consists of the testimony of Paula Rosenbaum; the testimony of Carla Clare; and the testimony of Tina Olson.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked in the customer care center operated by the employer to respond to incoming customer service calls. The claimant was a customer service representative and had worked for the employer since July 9, 2007. Her last day of work was March 20, 2010. She was terminated on that date for violation of the employer's customer privacy policy.

The incident that led to the claimant's termination occurred on March 20, 2010. The employer has a policy that requires its representatives to confirm the identity of a caller prior to giving out any account information. This verification process requires that the representative obtain certain information from a caller to make certain that the caller is authorized on the account. For example, a customer may be asked for a password or the last four digits of the social security number. This policy is very important to the employer and 100 percent compliance is required.

On March 20, 2010, a customer called because she noticed a misspelling of her first name when she was tracking information about a rebate. The claimant called the rebate center on behalf of the customer and disclosed the customer's billing address to the rebate center, which was a third-party vendor. The claimant did not verify the customer's identity before she called

the rebate center and did not have the customer's permission to give out the billing address. The claimant's mistake was discovered when the call was reviewed by the claimant's manager.

The claimant had been given a previous warning on November 6, 2008, for violating the customer privacy policy. She was also given a final written warning on October 24, 2009, although neither the claimant nor the employer were certain that the policy had been violated as the call had not been taped for review. Because the claimant had two previous warnings, the decision was made to terminate her employment.

REASONING AND CONCLUSIONS OF 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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes errors of judgment or discretion or acts that constitute simple negligence in isolated instances. The employer has the burden of proof to show misconduct.

The claimant acknowledged that she made a mistake in how she handled the customer service call on March 20, 2010. The claimant failed to verify the caller's identity prior to contacting a third-party vendor on the caller's rebate. There is no evidence that the claimant's actions were deliberate or malicious. She simply forgot to perform part of her job, albeit a very important

requirement as far the employer was concerned. Although the claimant did have two previous warnings on customer privacy, one was given on November 6, 2008, which is too remote in time. The second warning on October 24, 2009, may have been for something that the claimant did not even do. She self-reported a possible problem to her supervisor. She was not certain if she had violated the policy or not. There was no recording for either of them to check. The employer may have issued a warning, but that fact alone is insufficient to show a pattern of conduct that would elevate the claimant's error on March 20, 2010, to something more than a simple error.

There is insufficient evidence in this record to show misconduct. Accordingly, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated April 9, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css