

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIELE M RICHMOND
Claimant

APPEAL NO. 07A-UI-08581-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**UNITED STATES
CELLULAR CORPORATION**
Employer

**OC: 08/05/07 R: 03
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated August 28, 2007, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 24, 2007. The claimant participated. The employer participated by Angie Bailey and Diana Johnson. Exhibits One, Two, and Three were received into evidence.

ISSUE:

At issue in this matter is whether Ms. Richmond was discharged for misconduct in connection with her work and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant last worked for this employer from September 18, 2006, until August 6, 2007, when she was discharged from employment. Ms. Richmond held the position of full-time customer service representative and was paid by the hour. Her immediate supervisor was Diana Johnson. Ms. Richmond was discharged after the employer determined that the claimant had intentionally changed her authorized break period without the approval of company management. Due to the nature of the employment and the necessity that telephones be sufficiently manned throughout the work shift, the employer sets break times for its customer service representatives. Ms. Richmond was aware of the company policy and had previously been warned by the employer for not following the company policy. Prior to discharging the claimant, Ms. Johnson met with the claimant. Initially, the claimant was unwilling to discuss her conduct in taking unauthorized break times, then responded, "I take them when I want, to be with other employees." Based upon the claimant's violation of company policy and her response, the decision was made to terminate the claimant from employment.

It is the claimant's position that she was unable, at times, to take breaks at authorized times because of inbound telephone calls that she was receiving on behalf of the company.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes, based upon the evidence in the record, that the employer has sustained its burden of proof in establishing that Ms. Richmond's discharge from employment took place under disqualifying conditions. The evidence in the record establishes that Ms. Richmond was aware of the times that she was authorized to take breaks and was aware that she needed the authorization of company management to vary her break times. The claimant had also been warned in the past for violation of company policy. She was aware that violation of company policy could result in her termination from employment. The claimant was discharged when the employer determined that Ms. Richmond had taken breaks at unauthorized times on a number of occasions and had not received authorization to do so. When questioned about the matter, the claimant was initially unwilling to discuss it, but subsequently indicated that she had intentionally taken the breaks in order to be with other employees. This conduct shows a willful disregard for the employer's interests and standards of behavior and thus is disqualifying under the provisions of the Iowa Employment Security Act.

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.

For the reasons stated herein, the administrative law judge finds that the claimant was discharged for misconduct. Benefits are withheld.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. The claimant is overpaid benefits in the amount of \$2,520.00.

DECISION:

The representative's decision dated August 28, 2007, reference 01, is hereby reversed. The claimant was discharged for misconduct. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant was overpaid unemployment insurance benefits in the amount of \$2,520.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw