

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROY SNYDER
Claimant

**DIA APPEAL NO. 21IWDUI2124
IWD APPEAL NO. 21A-UI-09393**

CELLULAR ADVANTAGE, INC.
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/28/21
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 25, 2021 (reference 01) unemployment insurance decision that denied benefits based upon his separation from employment. The parties were properly notified of the hearing. A telephone hearing was held on June 9, 2021. The claimant, Roy Snyder, participated with counsel, Joel Fenton, and presented testimony. The employer, Cellular Advantage, Inc. participated through Treasurer and Chief Financial Officer, Matt Hayertz and Director of Sales, David Frazier. Both presented testimony at hearing. In addition, Employer's exhibits 1.1, 1.2, and 2-4 were entered into evidence without objection. The undersigned took official notice of the hearing notice, the transmittal form, the decision at issue herein and the request for appeal.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant Roy Snyder began work as a Sales Associate with Cellular Advantage, Inc. on June 25, 2016. Upon employment with the company, Claimant was provided with the employer's policies regarding appropriate behavior and violence in the workplace. He signed receipt of that policy. Claimant's immediate supervisor was Store Manager Victoria "Tori" Pinney. Pinney reported to David Frazier, Director of Sales, who in turn reported to the Vice President of Sales, Nick Villoti. Frazier's office at corporate headquarters was across the hall from Matt Hayertz, the Treasurer and Chief Financial Officer. (Hayertz testimony; Ex. 1.1, Ex. 1.2, Ex. 2).

Employer's policies included a description of conduct that was not conducive to promoting a positive work environment, and a prohibition against violence in the workplace. Work policies prohibited intimidation and other disruptive behavior that could lead to disciplinary action. Actions that could warrant immediate discharge included insubordination, misconduct or unsatisfactory performance, as well as acting discourteously, unprofessionally or otherwise

inappropriately toward customers or employees, or using/allowing profanity or other unprofessional or inappropriate speech in front of customers or employees. Other bases for discharge included conduct that was not conducive to promoting a positive work environment. Employer has a violence-free workplace policy stating violence, threats, harassment, intimidation, and other disruptive behavior would not be tolerated, including statements, gestures, or expressions that communicated a direct or indirect threat of physical harm. (Ex. 1).

Employer did not provide documented disciplinary issues regarding Claimant before October 29, 2020. On that date, Pinney documented an incident with Claimant where she wanted to have a conversation with him and he was disrespectful, unengaged, and uncommunicative. The corrective action plan directed that Snyder would complete all work outlined in an email labeled "downtime resource" and directed that Snyder would be respectful and professional when communicating with all staff, leadership, and customers. Failure to comply would result in further disciplinary action up to termination. Neither Frazier nor Hayertz were involved in that discipline. Finney, who still works for the employer, was not asked by the employer to participate in this hearing. Frazier testified that Pinney would have had a conversation with him before determining the corrective action to take. (Ex. 3; Hayertz testimony; Frazier testimony).

On November 24, 2020, Claimant again received corrective action due to demonstrating disrespect and a lack of teamwork. Nick Villotti, the Vice President of Sales, got involved and Claimant was suspended for five shifts. Villotti informed Hayertz via email that leaders had several conversations about disrespect toward leadership and coworkers and that this was a recurring issue. Villot stated Claimant's behavior in coming back into the store after being sent home for the day and showing pictures of his kids to Pinney was borderline intimidating and he was not to contact her during his suspension. Villotti informed Claimant that his employment would be terminated if there were another instance of disrespect/unprofessionalism toward employees or customers. Hayertz noted Claimant had been inappropriate during other instances as well, which had been discussed with Claimant in a less formal manner. (Hayertz testimony; Ex. 4).

On or about May 1, 2021, a customer emailed the employer's CEO, saying Claimant had been extremely rude, snarky and inappropriate. (Hayertz testimony). Claimant described this incident differently, stating the customer had been extremely rude to a transgender employee. The customer was yelling and rather upset so Claimant interjected himself to help. The customer stated she had problems with her phone and needed help with insurance. He said he would help her and she responded that she would rather pay off the old phone and get a new one. This occurred fifteen minutes before closing and her request would have taken an hour. Claimant told her the store was closing and directed her to another location a few blocks away that was open for another hour. Claimant stated he'd informed the sales manager, Jeff, about the incident and Jeff had praised him for his actions. Claimant passed on the information about this encounter to higher ups. He stated he was acting in good faith and wanted the person to remain a customer, but also wanted her to leave the store due to her treatment of the employee. Claimant stated the store's closing was an excuse to get her to leave. (Snyder testimony).

On March 2, 2021, when Claimant came in to work, Pinney told him they would be calling David Frazier about the customer. Frazier stated they had a corrective action plan that they intended to impose, which consisted of a ten-day suspension. Claimant was not going to be fired at that time. Pinney placed the call on speaker phone on her end and Frazier put the call on his speaker phone as well. During the conversation, Pinney explained the corrective action plan to Claimant, who became upset and used profanity directed toward Pinney and Frazier. Hayertz heard the phone call from his office and heard the profanity and Claimant's hostility toward Pinney and Frazier. He became concerned enough for Pinney that he contemplated calling the police. Hayertz heard Claimant telling Pinney and Frazier that they had their heads up their asses and that this was "fucking bullshit." Hayertz stated he'd never heard anyone talk in a workplace environment like that in his life. He did not hear Claimant issue any threats but felt it

was threatening to tell them they had their heads up their asses. Frazier told Claimant he needed to leave the store immediately and his suspension was starting right then. Hayertz and Frazier later discussed this incident and decided to terminate Claimant's employment. (Hayertz testimony; Frazier testimony).

On March 3, 2021, Hayertz called Claimant and informed him that this employment was terminated. Hayertz told him the reason for termination, letting him know he could hear the conversation that took place, including his use of profanity directed at Pinney and Frazier. Claimant replied that it was understandable and the conversation ended. Hayertz stated Claimant had a history of communication and human interaction issues, rudeness, a lack of teamwork and cooperation for quite some time. This conversation tipped the scale and Hayertz decided to terminate his employment. (Hayertz testimony).

Claimant testified that he did get angry and upset during the call, which took place fifteen minutes before the store opened for the day. He did raise his voice and was yelling. Whenever he tried to explain to Pinney and Frazier what had happened with that customer, he kept getting shut down and told it didn't matter. He got upset when he was told he was getting a ten-day suspension. Claimant stated he'd never heard of a ten-day suspension. He agreed that he used the "f" word and made the "heads up their asses" comment. He felt he was treated unfairly and he was uncharacteristically angry. He had no prior incidents of this nature. He'd had friction with Pinney before this and there had been a lot of miscommunication. (Snyder testimony).

REASONING AND CONCLUSIONS OF LAW:

As a preliminary matter, the administrative law judge finds that the claimant did not quit his employment. Claimant was discharged from employment. For the reasons that follow, the administrative law judge concludes that Employer had reason to discharge Claimant for insubordination and directing profanity at other employees. The question to resolve is whether that discharge was for conduct that would disqualify him from receiving unemployment benefits.

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.

Iowa Admin. Code r. 871-24.32(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. (emphasis added)

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 11 (Iowa 1982). A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. 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. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. 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." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806, 808 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731, 736 (Iowa App. 1986).

The use of improper language in the workplace, in a confrontational or disrespectful context, may constitute misconduct disqualifying an employee from receiving unemployment compensation benefits, even in isolated situations. *Myers v. Employment Appeal Board*, 462 N.W.2d 734, 738 (Iowa App. 1990). The level of misconduct depends on the context in which it

is said and the general work environment. *Id.* "Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions 'liberally to carry out its humane and beneficial purpose. *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 86 (Iowa 1997). *Nolan v. Emp't Appeal Bd.*, 2011 WL 441365 at *3 (Iowa Ct. App. 2011). "Misconduct sufficient to disqualify a claimant from receiving unemployment benefits 'connotes some deliberate act or omission or such carelessness as to indicate a wrongful intent.' *Id.* (internal citation omitted). 'The focus is on deliberate, intentional or culpable acts by the employee.' *Id.* (internal citation omitted). The use of vulgar language can rise to the level of substantial misconduct if it is done in a confrontational manner. *Id.*, citing *Henecke v. Iowa Division of Job Service*, 533 N.W.2d 573, 576 (Iowa Ct. App. 1995).

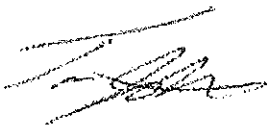
Furthermore, "an employer has the right to expect decency and civility from its employees. (internal citation omitted). The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct. (internal citation omitted)." *Henecke*, 533 N.W. 2d at 576. (noting there was more than a single incident and Henecke's actions showed a refusal to interact effectively with his supervisor and constituted insubordination.").

The undersigned finds that while Claimant's behavior on March 2, 2021 did not directly impact the employer's business as no customers were present. However, his use of profanity and yelling at his supervisors, one of whom was with him in the room, was extremely confrontational. His history of disrespecting his supervisor demonstrates that this was not an isolated incident.

Claimant's prior incidents revealed his lack of respect for and lack of deference to his supervisor. His behavior toward Pinney in November of 2020 was described as being borderline intimidating. Claimant's disciplinary history demonstrates Claimant's confrontational and disrespectful attitude toward his supervisors. On March 2, 2021, Claimant yelled at his supervisors, telling them this was "fucked up" and they had their "heads up their asses." The undersigned finds, based upon all of the evidence presented, that his actions constituted substantial misconduct that disqualifies him from receiving unemployment benefits.

DECISION:

The March 25, 2021 (reference 01) unemployment insurance decision is affirmed. Unemployment insurance benefits shall be withheld in regards to this employer until such time as claimant is deemed eligible.



Tricia A. Johnston
Administrative Law Judge

June 16, 2021
Decision Dated and Mailed

TAJ/

CC: Roy Snyder (by First Class Mail)
Attorney Joel Fenton (by First Class Mail and Email)
Cellular Advantage, Inc., Employer (by First Class Mail)
Nicole Merrill, IWD (By Email)
Joni Benson, IWD (By Email)

Note to Claimant: If this decision determines you are not eligible for regular unemployment insurance benefits and you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.