

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BETH E VAN HYFTE
Claimant

APPEAL NO. 17A-UI-08083-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**UNITED STATES CELLULAR
CORPORATION**
Employer

OC: 07/23/17
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Beth Van Hyfte (claimant) appealed a representative's August 7, 2017, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with United States Cellular Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 28, 2017. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired at the end of May 1998, and at the end of her employment she was working as a full-time customer service coach. The employer has an intranet policy. The claimant did not sign that she received or read the policy. The employer did not issue the claimant any warnings after 2010.

In May 2016, the claimant became a customer service coach. At that time the employer told her to complete forms to receive a corporate MasterCard. The employer said she should have the card in case she traveled for the company or purchased items for the team. The employer gave her no other instructions.

On July 21, 2017, the employer met with the claimant about her corporate card's past due bill and charges for personal items. The claimant learned there was an intranet policy that did not allow employees to charge personal items on the corporate credit card or to have past due charges. The employer told the claimant she would be issued a final written warning. On July 24, 2017, the claimant's day off, the employer called the claimant in for a termination meeting. The employer terminated the claimant for having personal charges and past due charges on her corporate card.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The claimant was given insufficient information about the corporate card before its issuance and use. After the employer discovered the charges, it did not give the claimant any warnings.

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to

that separation. Inasmuch as the employer had not previously warned the claimant about any of the issues leading to the separation, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's August 7, 2017, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs