

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Christa Ellis was employed by US Cellular from November 17, 2003 until August 9, 2005. She was a full-time retail wireless consultant.

On May 17, 2005, the claimant was placed on a 90-day probation and performance improvement plan. There had been numerous complaints about Ms. Ellis from customers and co-workers regarding rudeness and "bad attitude." The plan notified the claimant she could be discharged if there were any further complaints from customers or co-workers.

On August 8, 2005, Sales Supervisor Randy Van Middlesworth received a customer complaint regarding the service provided to her by Ms. Ellis on August 1, 2005. The reason the customer waited a week to make the complaint is unknown. The customer indicated she had come in to pick up her phone which had been in for repair, and felt she had been treated very rudely by the claimant. In addition, the phone did not work after the repair.

Mr. Van Middlesworth apologized and offered the customer a new phone. He did not tell Ms. Ellis of the complaint but had her wait on the customer on August 9, 2005, to determine if there was any improvement. Afterward he contacted the customer who acknowledged the claimant "had not been as rude" but she was still not happy with the overall experience.

US Cellular believes that "the customer's perception is our reality" and the customer had come away with a negative impression of the company. The supervisor discussed the matter with a human resources representative, and the decision was made to discharge the claimant for a failure to successfully complete her probationary period and the performance improvement plan.

Christa Ellis has received unemployment benefits since filing a claim with an effective date of August 7, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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 claimant has been advised her job was in jeopardy as a result of her rudeness to customers and co-workers. She was required to fulfill all the requirements of the performance improvement plan, which she failed to do. Ms. Ellis feels she was not rude to the customer but this is not the perception of the customer. As the employer stated, "the customer's perception is our reality" and the reality is that the customer had a negative experience with the claimant which negativity affected her overall view of the employer. This is not an isolated incident but a final occurrence of rudeness to a customer. This is conduct not in the best interests of the employer and the claimant is disqualified.

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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

#### DECISION:

The representative's decision of September 1, 2005, reference 01, is reversed. Christa Ellis is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible. She is overpaid in the amount of \$2,418.00.

bgh/s