

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JANEEN HETTINGER**  
Claimant

**APPEAL NO: 06A-UI-08615-E**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNITED STATES  
CELLULAR CORPORATION**  
Employer

**OC: 07-30-06 R: 03  
Claimant: Appellant (2)**

Section 96 5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 18, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Waterloo, Iowa, before Administrative Law Judge Julie Elder on October 3, 2006. The claimant participated in the hearing. Carrie Lalk, Sales Manager; Denis LeRoy, Associate Relations Representative; and Matt Murray, Sales Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time retail wireless consultant for United States Cellular from November 22, 2004 to July 29, 2006. The employer's policy prohibits associates from accessing the accounts of their friends and family (Employer's Exhibit One). A reminder policy was issued December 1, 2005 (Employer's Exhibit One). On July 21, 2006, the claimant made a payment on her son's account. She had also done so November 13 and November 28, 2005, and activated a loaner phone for her son when his was sent in for repair January 6, 2006 (Employer's Exhibit Two). There is no evidence she tampered with the account or did anything to her son's advantage beside pay the bill and activated a loaner phone. The employer terminated the claimant's employment July 29, 2006. The claimant had not received any previous warnings about the situation.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the claimant did violate the employer's policy, the evidence indicates she did not know she was doing so and it seems a simple warning would have eliminated the problem. Under Iowa law, misconduct must be intentional and substantial to be disqualifying. The administrative law judge concludes the claimant's actions do not meet either standard in this case. Therefore, benefits are allowed.

**DECISION:**

The August 18, 2006, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs