

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHANDRA JORDAN**  
Claimant

**APPEAL NO. 08A-UI-10585-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNITED STATES CELLULAR CORP**  
Employer

**OC: 10-05-08 R: 03**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 30, 2008, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 1, 2008. The claimant participated in the hearing. Allison Moe, Customer Service Coach and Shelly Lawless, Human Resources Manager, participated in the hearing on behalf of the employer.

**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 full-time customer service representative for United States Cellular from July 17, 2006 to October 8, 2008. On October 6, 2008, Customer Service Coach Allison Moe was pulling a team report for October 1 through October 6, 2008, and discovered the claimant had 59 “short calls” lasting ten seconds or less during the one and one-half days she worked that week. The system flags short calls in order to alert the employer to equipment problems or associate misconduct. Ms. Moe contacted the center performance manager to investigate the situation. On October 7, 2008, Ms. Moe held a quality assurance session with the claimant and listened to randomly selected calls. There were calls lasting three, five and seven seconds and Ms. Moe asked the claimant why. The claimant asked Ms. Moe if she wanted to know the truth and Ms. Moe said she did and the claimant said she had been “avoiding work” by deliberately letting calls go. The parties had previously had conversations about the claimant’s dissatisfaction with her job and the fact she was “burned out” and did not care about the job any longer but had bills to pay. Ms. Moe told her that was not a good enough reason to continue her employment if she was unhappy. After all of the team reports ran Ms. Moe went over them with management October 8, 2008, and detected a deliberate manipulation of the phone system by the claimant to avoid taking calls. She had 17 percent of the total of short calls for the week in the one and one-half days she worked; repeated “idle,” “make busy” and “not ready” status on her phone where she pressed the in-call button to send

calls back into the queue. If customers are placed back into the queue or disconnected they face a much longer wait for service which negatively impacts the employer's customer service. After reviewing all of the reports and the claimant's statements the employer decided to terminate the claimant's employment. During the termination meeting the claimant indicated she understood why the employer was taking the action it was and stated she "had done it to herself."

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). When questioned about her short calls the claimant told the employer she was avoiding work due to burn out and effectively not caring about her job anymore. The employer's reports bore that out as she had 17 percent of the team's weekly total of short calls during the one and one-half days she worked the week of October 1 through October 6, 2008, as well as a disproportionate amount of idle, make busy and not ready times.

While the claimant attributes those situations to equipment errors the employer's testimony that she never brought her concerns to Ms. Moe and her statements about work avoidance were credible. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The October 30, 2008, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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