

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JACKLYNN A RAY
1047 – 20TH ST SE
CEDAR RAPIDS IA 52403

UNITED STATES CELLULAR CORP
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-03263-DWT
OC 02/15/04 R 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

United States Cellular Corporation (employer) appealed a representative's March 11, 2004 decision (reference 01) that concluded Jacklynn A. Ray (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 12, 2004. The claimant participated in the hearing. The employer responded to the hearing notice, but was not available for the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in June 2003. The claimant worked as a full-time customer service representative. Bobbie O'Connell was the claimant's supervisor.

The claimant was on a final written warning for attendance problems and understood her job was in jeopardy if she any more unexcused or unapproved absences in February 2004. On February 13 or 14, the claimant used the employer's computer program and asked for vacation days on February 17 and 18. The computer sent the claimant a message that her request for vacation on February 17 and 18 had been approved. The computer program sends a message to the employee indicating whether the request has been approved or not. Sometimes the computer will change the approval status based on the employer's needs. The claimant understood approval could change and before she left on Friday, she checked the computer program to make sure she still had both days approved as vacation days.

The claimant met with her supervisor on February 14 to discuss her annual review. The claimant considered her review satisfactory except for the claimant's attendance, which she was working on to improve. At the end of the review, her supervisor indicated she would see the claimant at work again on Wednesday. The claimant responded by telling her she would not be at work on Wednesday because she had been approved for vacation February 18 and would not be at work until Thursday. Nothing more was said on February 14 and the claimant went home.

On February 18, 2004, the claimant's supervisor called the claimant at 3:00 p.m. and asked her why she as not work. The claimant worked 8:00 a.m. to 5:00 p.m. When the claimant indicated she had been approved for vacation, her supervisor told she was not approved to take February 18, 2004 off as a vacation day because the computer system had modified her request vacation time based on the employer's work needs. The claimant does not know when the computer system denied her vacation day for February 18 because she had double-checked her status on this on February 13 before she left work.

On February 19, 2004, the employer discharged the claimant for failing to work as scheduled on February 18, a violation of the employer's attendance policy.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

In February 2004, the claimant understood her job was in jeopardy for attendance problems. The claimant decided to ask for February 17 and 18 off from work because she was still experiencing some problems with her back and had some personal matters to take care of. The claimant did not want any absence to be unapproved because she was on her final written warning for attendance problems. Before the claimant left work on Friday, February 13, she checked the computer program to make sure she still had been approved to take vacation on February 17 and 18. When the claimant checked again, she still had approval to take vacation both days.

The employer knew on February 14 the claimant did not plan to be at work on February 18 because she understood she had received approval to take a vacation day on February 18. The evidence establishes the claimant did not intentionally fail to work as scheduled on February 18. Instead, she reasonably believed she had been approved to take a vacation day on February 18, 2003. The claimant did not commit work-connected misconduct. Therefore, she is eligible to receive unemployment insurance benefits as of February 15, 2004.

DECISION:

The representative's March 11, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of February 15, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/b