

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

BRETT E STOUT
210 – 32ND ST NE APT 4
CEDAR RAPIDS IA 52402-6030

UNITED STATES CELLULAR CORP
C/O TALX EMPLOYER SERVICES
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-05846-DT
OC: 04/30/06 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 is 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 May 23, 2006 decision (reference 01) that concluded Brett E. Stout (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 22, 2006. The claimant participated in the hearing. Anthony Freeman appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 13, 2004. He worked full time as a customer service representative and associate phone program representative in the employer's Marion, Iowa, call center. His last day of work was May 3, 2006. The employer discharged him on that date. The reason asserted for the discharge was unprofessionalism.

Mr. Freeman was filling in as the claimant's team coach during the absence of the claimant's regular team coach. In a team meeting on April 21, Mr. Freeman informed the team of a change in the employer's policy regarding backdating of a particular feature. The claimant verbalized his opinion that it was not a very consumer-friendly change in policy; he had been used to the meetings being an opportunity to speak openly regarding work issues. Mr. Freeman advised him to stop speaking negatively of the policy in the meeting, and the claimant did. Mr. Freeman later informed the claimant that he was going to be given a warning for his behavior. The claimant then complained to a human resources representative, who indicated that she would check into the situation; however, no warning was ever presented to the claimant.

The claimant was also a college student, and the claimant's regular team coach had informed him that he could do some of his class assignments at work. On April 27, the claimant sent eight copies of a 12-page final paper to a printer at work. Mr. Freeman felt this was inappropriate. On April 29 the claimant was on an associate phone program call for 18 minutes, an unusually long call. The associate to whom he was speaking was seeking to again change the phone number on the account; over the past several years, the associate had made about 20 other phone number changes on the account. The claimant had been instructed in the past that there could be a fee assessed for making excessive changes, and was trying to research that while on the call. While on the call, he was not able to find any conclusive information, but proceeded to tell the associate that there would be a \$15.00 charge. The employer found this fee assessment to be baseless and improper, even though there had been a fee in the past. The claimant also made statements regarding to potentially at least temporarily disable the signal insurance on the associate's phone given the change. He believed that there was a possibility of at least interruption even though only the phone number was being changed, not the phone equipment; the employer found the claimant's statements to be unsubstantiated and concluded they were said to try to intimidate the associate.

Finally, on April 29, given comments Mr. Freeman had been making, the claimant felt his job was in jeopardy, and determined to write a letter to the president of the company. While doing so, he placed his phone on "not ready" status for nine minutes. His regular team coach had allowed him to place his phone in this status during slow times when he was working on class assignments. Mr. Freeman found that this was inappropriate given that the claimant was not working on customer accounts while in the "not ready" status.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa

App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate questions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

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 focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or

- b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
- 2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 - 1. The employer's interest, or
 - 2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is in essence, unsatisfactory job performance. Misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. Huntoon, supra. There is no evidence the claimant intentionally acted to place his job in jeopardy. Under the circumstances of this case, the claimant's actions at worst were the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, or were good faith errors in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's May 23, 2006 decision (reference 01) is affirmed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

ld/kkf