

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIELLE R STROUD
Claimant

APPEAL NO. 14A-UI-04012-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**UNITED STATES CELLULAR
CORPORATION**
Employer

**OC: 03/23/14
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated April 9, 2014, reference 01, which denied unemployment insurance benefits finding the claimant was discharged for excessive, unexcused absenteeism and tardiness. After due notice was provided, a telephone hearing was held on May 6, 2014. Claimant participated. Although duly notified, the employer did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Danielle Stroud was employed by U.S. Cellular Corporation from January 14, 2013 until March 25, 2014 when she was discharged from employment. Ms. Stroud was employed as a full-time customer service representative and was paid by the hour. Her last immediate supervisor was Lindsey (last name unknown).

Ms. Stroud was discharged from her work with U.S. Cellular Corporation on March 25, 2014 for unsatisfactory attendance and punctuality. The claimant's most recent attendance infraction occurred two days earlier, on March 23, 2014 when the claimant overslept and reported to work 45 minutes late. The claimant's alarm clock malfunctioned and Ms. Stroud immediately contacted the employer to report that she would be arriving at work late because of the incident. The claimant was instructed to report to work and allowed to work that day and the following day before being discharged. The claimant had received a verbal warning regarding attendance in September 2013 when she was required to leave work early because of a medical issue with her son. Ms. Stroud was absent on two further occasions due to the illness of her children and placed on a final attendance warning. The final infraction was when the claimant inadvertently overslept on March 23, 2014.

The claimant testified that all of her attendance infractions were related to the illness of herself or her children and that she had properly notified the employer of each impending absence in compliance with company policy. The claimant maintains that she was required to use a substantial number of vacation and personal time hours when the employer changed her working hours and the claimant had to use vacation or personal time to leave work each day to pick up her children from daycare.

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 § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury do not constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. In the case of illness, a report of absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employee's point system or absenteeism policy is not dispositive of the issue of qualification for benefits. Because the evidence in the record establishes that the majority of the claimant's absences had been for the illness or injury of herself or her children, they are considered excused for the purposes of the Iowa Employment Security Act. As the evidence in the record does not establish that the claimant had been excessively absent, the final incident where the claimant overslept does not rise to the level of misconduct sufficient to warrant the denial of unemployment insurance benefits.

There being no evidence to the contrary, the administrative law judge concludes for the above-stated reasons that the claimant's discharge took place under non disqualifying conditions. While the employer's decision to separate Ms. Stroud from her employment may have been a sound decision from a management viewpoint, it was not a disqualifying separation and benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated April 9, 2014, reference 01, is reversed. Claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs