

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY J OLTHOUSE
Claimant

APPEAL NO. 09A-UI-05999-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**UNITED STATES CELLULAR
CORPORATION**
Employer

OC: 03/15/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

United States Cellular Corporation (employer) appealed a representative's April 6, 2009 decision (reference 01) that concluded Timothy Olthouse (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 13, 2009. The claimant participated personally. The employer participated by Paula Rosenbaum, Associate Relations Representative, and Carla Clare, Interim Data Technical Services Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 22, 2007, as a full-time wireless data group support associate. The claimant signed for receipt of the employer's electronic handbook. The handbook contained a progressive disciplinary policy. The employer issued the claimant a verbal warning for tardiness. A memo went out to employees on an unknown date indicating that employees should not engage in work avoidance by calling each other. Approximately 50 employees out of 100 were terminated for work avoidance.

In March 2009, the employer received the results of an audit. Two calls that involved the claimant showed that he transferred calls to a vendor for further support and stayed on the line. The claimant understood from two supervisors that persons in the claimant's position should stay on the line to learn how to solve customer issues. A call on an unknown date showed the claimant remained on the line for 4.16 minutes after transferring the call. Another call on January 27, 2009, showed the claimant transferred the call to the vendor and remained on the line for 105 minutes before disconnecting at 8:13 p.m. The call continued between the customer and the vendor. The claimant disconnected because he learned all he could from the call. The claimant took the break he missed at the end of his shift.

On March 13, 2009, the employer terminated the claimant for work avoidance on January 27, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as employer had not previously personally warned the claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

DECISION:

The representative's April 6, 2009 decision (reference 01) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css