

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

COLETTE E KERN
605 – 1ST AVE
SPRINGVILLE IA 52336-9633

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

Appeal Number: 06A-UI-05380-HT
OC: 04/23/06 R: 03
Claimant: Appellant (2)

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:

The claimant, Colette Kern, filed an appeal from a decision dated May 16, 2006, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 9, 2006. The claimant participated on her own behalf. The employer, US Cellular, participated by Associate Relations Representative Angie Bailey and Customer Service Supervisor Travis Lee.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Colette Kern was employed by US Cellular from

August 4, 2001 until April 21, 2006. She was a part-time customer service representative (CSR).

On April 5, 2006, the claimant received a call from a person requesting to add a feature to the cell phone account. This change incurred an extra charge to the account holder. Ms. Kern read the information on the computer regarding the account and the person calling was authorized to receive "Information only," but not to make any changes. She made an error and allowed the change.

On April 9, 2006, the account holder called about the extra charges and made a complaint to another CSR. The CSR referred the complaint to her supervisor, Shannon McNamara, who forwarded the complaint via e-mail to Customer Service Supervisor Travis Lee because he was the claimant's direct supervisor. Mr. Lee did not open that e-mail until a reminder popped up eight days later on April 17, 2006.

The customer's account was changed, a refund made and an apology issued. Mr. Lee talked with Ms. Kern and she acknowledged she had made an error by not reading the "special instructions" on the account more carefully. The employer had initiated a "zero tolerance" policy for such violations at the beginning of March 2006 and the claimant was discharged April 21, 2006, for violating the policy. She had not received any prior disciplinary action.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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 claimant was discharged for violation of the zero tolerance policy on changes to customer accounts. However, this was an isolated incident of poor judgment in an employment period of four and one-half years during which she had received no disciplinary action of any sort. Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Newman v. IDJS, 351 N.W.2d 806 (Iowa App. 1984).

In addition, the administrative law judge would question whether the action was a current act of misconduct as required for a disqualification under 871 IAC 24.32(8). Mr. Lee received notice of the customer complaint on April 9, 2006, and did not open the e-mail or act upon the matter for more than a week, asserting he was "busy" with other matters.

The claimant is qualified for benefits as she is otherwise eligible.

DECISION:

The representative's decision of May 16, 2006, reference 02, is reversed. Colette Kern is qualified for benefits, provided she is otherwise eligible.

bgh/cs