

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CASEY N COONEY**  
Claimant

**APPEAL NO. 13A-UI-12574-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNITED STATES CELLULAR  
CORPORATION**  
Employer

**OC: 06/02/13**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated November 5, 2013, reference 02, which denied unemployment insurance benefits finding that he was discharged from work for repeated tardiness after being warned. After due notice was provided, a telephone hearing was held on November 26, 2013. Claimant participated. The employer participated by Ms. Lisa Neal, Training Coach.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Casey Cooney was employed by United States Cellular Corporation from September 16, 2013 until October 17, 2013 when he was discharged from employment. Ms. Cooney was hired to work as a full-time customer service representative and was being paid by the hour. His immediate supervisor was his trainer, Lisa Neal.

Mr. Cooney was discharged for being excessively tardy during training. During the initial 90 days of employment employees are being trained and the company emphasizes the necessity for employees to be present and punctual. Employees are aware that they are subject to discharge if they are excessively absent or tardy during the first 90 days of employment.

The claimant's first incident of tardiness took place on October 1, 2013 when the claimant was over one hour late in reporting to work. On that date the claimant's cat was ill and Mr. Cooney took the animal to the veterinarian but did not inform the employer that he would be late because he left his cell phone at home and did not remember the employer's telephone number. The same day Mr. Cooney was 16 minutes late in reporting back from lunch after falling asleep in the company's relaxation room. Although the claimant had been tardy on two occasions at that point, the claimant's supervisor declined to give the claimant a tardiness warning as both occurrences had taken place on the same day.

On October 4, 2013, Mr. Cooney was late in reporting to work because of car trouble. The claimant had, on the preceding day, told other employees that he might be experiencing car trouble the next day. The claimant did not respond to offers by other employees to provide him transportation to work on October 4. On October 4, 2013, the claimant was issued a final written warning regarding tardiness and placed on notice that any further tardiness during the probationary period could result in his termination from employment.

Mr. Cooney was discharged on October 17, 2013 after he reported to work one hour and forty minutes late after oversleeping. The claimant had taken medications for insomnia and did not hear his cell phone alarm clock that morning.

It is the claimant's position that he was not intentionally tardy and therefore should not be denied unemployment insurance benefits.

### **REASONING AND CONCLUSIONS OF LAW:**

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.

871 IAC 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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant a denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

No aspect of the contract of employment is more basic than the right of the employer to expect that its employees will appear for work on the hour and day agreed upon and recurrent failure to honor that obligation shows a substantial disregard for the employer's interests and standards of behavior.

The Supreme Court of the state of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of job misconduct. The Court held that the absences must be both excessive and unexcused and that the concept includes tardiness, leaving early, etcetera. The Court held in the case of Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984) that absence due to matters of "personal responsibility", e.g. transportation problems or oversleeping are considered unexcused.

The evidence in the record establishes that Mr. Cooney had been excessively tardy during the short period of his employment. The claimant had been put on adequate notice through company policy and a final written warning that his employment was in jeopardy. The claimant was discharged after he overslept on October 17, 2013 and reported to work one hour and forty minutes late.

The employer has sustained its burden of proof in establishing that the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld.

**DECISION:**

The representative's decision dated November 5, 2013, reference 02, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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