

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

SUNNY D HAWK
402 S MAIN
MOULTON IA 52572

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

Appeal Number: 05A-UI-04047-JTT
OC: 03/27/05 R: 03
Claimant: Appellant (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 for Misconduct

STATEMENT OF THE CASE:

Sunny D. Hawk filed a timely appeal from the April 14, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 6, 2005. Ms. Hawk participated in the hearing. Laura Erickson, Sales Supervisor, represented the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Sunny Hawk was employed by United States Cellular as a part-time retail wireless consultant from November 27, 2000 until March 28, 2005, when Laura Erickson, Sales Supervisor, and Leah Erickson, Kiosk Manager, discharged her for misconduct.

The final incident that prompted Ms. Hawk's discharge came to the attention of the employer on March 22, 2005. On that day, Ms. Hawk sent an e-mail to a sales supervisor that indicated a co-worker had exchanged some telephones for Ms. Hawk's father and step-mother, when Ms. Hawk had, in fact, been the person who handled the exchange. Ms. Hawk had called her co-worker at home and asked to use his associate ID for the transaction, so that it would appear as if the co-worker had handled the transaction. Ms. Hawk's supervisors reviewed the customer's account and discerned that it was the account that belonged to Ms. Hawk's father. They then contacted the co-worker whose ID had been used for the transaction, and he confirmed that Ms. Hawk had asked to use his ID for the transaction and that he had knowingly permitted the use. As they reviewed previous transactions on the account, the supervisors discerned that Ms. Hawk had handled the renewal of the account earlier in the year and had processed payments on the account.

The employer has a policy that prohibits employees from handling transactions on accounts belonging to their family members. The policy is discussed with employees at regular meetings.

Ms. Hawk's father is gravely ill. This may have played a factor in Ms. Hawk's decision to handle the transaction. When Ms. Hawk handled the transaction regarding her father's account, she was under the belief that she could escape being reprimanded so long as she did not receive the commission in connection with the transaction on her father's account. By using the co-worker's ID, Ms. Hawk made certain that any commission would go to the co-worker, not Ms. Hawk.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Hawk was discharged for misconduct in connection with her employment.

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).

Since the claimant was discharged, 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 is not necessarily serious enough to warrant a denial of unemployment 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). Before the administrative law judge can find that an employee was discharged for misconduct, the evidence in the record must establish the existence of a "current act" of misconduct. See 871 IAC 24.32(8). Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification for benefits. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See IAC 24.32(4).

The weight of the evidence establishes that Ms. Hawk was discharged for misconduct. The fact that Ms. Hawk needed to use a co-worker's ID to complete a transaction that she handled was sufficient to alert her that she was doing something counter to company policy. Had Ms. Hawk's actions ended there, the administrative law judge might have been able to conclude that Ms. Hawk's conduct was merely a good faith error in judgment. However, Ms. Hawk also sent a message to her supervisors in which she deliberately misrepresented who had handled the transaction. This action, i.e. lying to her employer, constituted misconduct in and of itself. In addition, it appears the final transaction was but the last of a series of violations that came to the employer's attention on March 22, 2005. The violations included receiving payments on the account. The administrative law judge did not believe Ms. Hawk's testimony that she did not look at the name of the account when processing the payments. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Hawk was discharged for misconduct. Accordingly, a disqualification will enter.

DECISION:

The Agency representative's decision dated April 14, 2005, reference 01, is affirmed. The claimant was discharged from employment for misconduct. The claimant is disqualified for benefits until she has worked and been paid wages for insured work equal to ten times her weekly benefit amount.

jt/pjs