

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AUSTIN E WILKINS**

Claimant

**APPEAL NO: 14A-UI-10917-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNITED STATES CELLULAR CORP**

Employer

**OC: 08/24/14**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
Section 96.7-2-a(2) – Charges Against Employer’s Account

**STATEMENT OF THE CASE:**

Austin E. Wilkins (claimant) appealed a representative’s October 3, 2014 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with United States Cellular Corporation (employer). After hearing notices were mailed to the parties’ last-known addresses of record, a telephone hearing was held on November 10, 2014. This appeal was consolidated for hearing with one related appeal, 14A-UI-10918-DT. The claimant participated in the hearing. Kenneth Bessey appeared on the employer’s behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Was the claimant discharged for work-connected misconduct? Is the employer’s account subject to charge?

**OUTCOME:**

Reversed. Benefits allowed. Employer’s account not subject to charge in current benefit year.

**FINDINGS OF FACT:**

The claimant started working for the employer on June 16, 2014. He worked part time (about 30 hours per week) as a retail wireless consultant in the employer’s Ottumwa, Iowa store. His last day of work was August 25, 2014. The employer discharged him on that date. The reason asserted for the discharge was dishonesty in improper acquisition of the employer’s property.

About the end of August the employer became aware that three other employees, most particularly one other employee, had been improperly acquiring the employer’s property and personally profiting from manipulating transactions. As it continued its investigation, the employer found that on July 14 the claimant had acquired a “smart watch” worth about \$300.00, but for which the cost had been adjusted to zero on his account by another employee. The

claimant testified that he had paid \$300.00 in cash to the one other employee, and had believed that the employee had deposited that amount into the register since he had taken the cash up to the front of the store where the register was located, but no cash was in fact deposited into the drawer. The claimant had understood that he was being given an employee discount of \$40.00, and that the \$40.00 would be credited onto his account against other charges.

The employer indicated through hearsay testimony that the other three employees had made statements asserting that the claimant was not an innocent victim of the transaction, but that he had known that the transaction was improper.

The claimant established an unemployment insurance benefit year effective August 24, 2014.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the conclusion that the claimant had known that the transaction he was involved in on July 14 was improper and dishonest. The employer relies exclusively on the second-hand account from the other employees who were apparently guilty of multiple improper transactions. However, without that information being provided first-hand, the administrative law judge is unable to ascertain whether those employees are credible. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence

that the claimant in fact did not make a bona fide attempt to pay for the equipment and that he knew that the transaction on July 19 was improper. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period began April 1, 2013 and ended March 31, 2014. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

**DECISION:**

The representative's October 3, 2014 decision (reference 03) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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