

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA L MOTTO

Claimant

APPEAL NO. 08A-UI-10541-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**UNITED STATES CELLULAR
CORPORATION**

Employer

**OC: 10/05/08 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Maria L. Motto filed a timely appeal from an unemployment insurance decision dated October 28, 2008, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held December 2, 2008 with Ms. Motto participating. Shannon McNamara and Shelly Lawless participated for the employer, United States Cellular Corporation. Employer Exhibit One was admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

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: Maria L. Motto was employed as a customer service representative by United States Cellular Corporation from July 17, 2006 until she was discharged October 8, 2008.

The employer operates five call centers across the country. Concerned at the high volume of incoming calls and the low level of customer service, the employer initiated reports through its IT department to find if customer service representatives were avoiding work by finding ways that they could not take incoming calls. Ms. Motto was found to have spent 542 minutes over the course of four 8-hour work shifts between September 20 and September 23, 2008 logged onto the employer's outbound phone line without actually connecting to any number within or outside of the company. Being logged onto the outbound line meant that no calls would come to her position. Ms. Motto's supervisor, Shannon McNamara, spoke with Ms. Motto on September 27, 2008 about the findings of the report. Ms. Motto could not explain the report's findings. Ms. McNamara told Ms. Motto that her job was in jeopardy. After reviewing the results of the investigations at all five call centers and making certain that appropriate and consistent discipline was being imposed, Ms. Motto was discharged on October 8, 2008. Ms. Motto had spent more time logged onto the outbound line than had any of the other associates at any of the call centers.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does.

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. See Iowa Code section 96.6-2. The evidence in the record establishes that over a four-day period Ms. Motto avoided incoming calls for something over nine hours. Given the fact that her job was to be a customer service representative, her avoidance of calls from customers constitutes misconduct, deliberate action contrary to the employer's interest. Benefits are withheld.

DECISION:

The unemployment insurance decision dated October 28, 2008, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs