

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATEY L SIMON

Claimant

UNITED STATES CELLULAR CORP

Employer

APPEAL NO: 09A-UI-10868-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/14/09

Claimant: Respondent (2-R)

Section 96.5-2-a - Discharge
871 IAC 24.32(1) – Definition of Misconduct
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated July 16, 2009, reference 01, that held the claimant was not discharged for misconduct on June 17, 2009, and benefits are allowed. A telephone hearing was held on August 13, 2009. The claimant participated. Paula Rosenbaum, Associate Relations Representative, and Melissa Pinger, Claimant's Coach/Supervisor, participated for the employer. Employer Exhibit One was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

Whether the claimant is overpaid benefits.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began full-time employment as a customer service representative on August 13, 2007, and last worked for the employer on June 16, 2009. The employer discharged the claimant on June 17 for falsification of a doctor's statement she submitted with a leave of absence request in light of prior discipline.

The employer uses Regroup as a third party contractor to review employee leave requests. The employer policy is to submit leave requests prior to a period of absence. The claimant reported an absence from work on May 6, 2009 due to illness that extended to a period from May 9 - May 14. When the claimant returned to work on May 16, she presented a doctor's statement that excused her for the period of the absence. The employer questioned the return to work date, as it appeared that it may have been altered. Supervisor Pinger asked the claimant to verify the period of absence that included May 6, since the doctor statement did not cover this date. The claimant replied that she would provide the requested medical documentation, and the matter was turned over to Regroup for leave processing.

When Regroup did not receive the required medical documentation for the claimant's leave request, it was denied. The employer requested the medical provider (MercyCare South) to verify claimant's visit of May 9 and the period of her excuse to return to work. The provider faxed to the employer on June 17 the doctor's note that set a claimant return to work date of May 11. The employer confronted the claimant with the issue of falsifying the doctor's note she presented on May 16, and she denied it. The employer believed the claimant was motivated to falsify the doctor's excuse, because she was out of sick time, and had been disciplined for attendance issues.

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.

The administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on June 17, 2009 due to falsification of a doctor's excuse for a leave of absence request that is employee dishonesty.

The claimant denied the falsification and that she presented the altered doctor's note to Supervisor Pinger. Although claimant stated she had a doctor's excuse to cover her leave period request (May 6 to May 14), she did not offer it as evidence for this hearing, and she did not submit it to the employer or Regroup to support her leave request. The claimant had the motive to falsify her absences based on being out of sick leave, and her discipline history for missing work.

There is no other rationale explanation for the employer receiving the altered doctor's note than claimant having presented to it. The incident is considered a current act of misconduct, because the employer put the claimant on notice of it on May 16, and gave her a significant period of time to overcome the evidence that she failed to do when discharged on June 17.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since the claimant is denied benefits by reason of this decision, there is an issue of overpayment that is remanded for determination.

DECISION:

The department decision dated July 16, 2009, reference 01, is reversed. The claimant was discharged for misconduct on June 17, 2009. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit

amount, provided the claimant is otherwise eligible. The overpayment issue is remanded for determination.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css