

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

KIMBERLY L COVINGTON

Claimant,

and

UNITED STATES CELLULAR CORP

Employer.

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HEARING NUMBER: 13B-UI-12505

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board, one member dissenting, reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**.

Monique F. Kuester

Cloyd (Robby) Robinson

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge in its entirety. The Claimant was discharged for talking about her divorce on a call with a customer. The Claimant had been told that she needed to be more 'personable' with customers on her calls. On the call in question, the customer brought up his divorce and the Claimant responded in kind. The Claimant had no prior issues with her calls other than on prior, expired written warning that occurred over a year ago on July 11, 2012, which involved raising her voice with a caller.

As for the final act, the Claimant may have used poor judgment on her call; however, she was merely acting in good faith as she believed she was being personable with the caller. There was no willful intent to harm the Employer. While the Employer may have compelling business reasons to terminate the Claimant, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Based on this record, I would conclude that the Employer failed to satisfy their burden of proof. Benefits should be allowed provided the Claimant is otherwise eligible.

John A. Peno

AMG/fnv