

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON D URWIN
Claimant

APPEAL NO: 10A-UI-04096-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED STATES CELLULAR CORP
Employer

OC: 02/07/10
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 March 1, 2010, reference 01, that held the claimant was not discharged for misconduct on February 10, 2010, and benefits are allowed. A telephone hearing was held on April 27, 2010. The claimant participated. Talla Rosenbaugh, Associate Relations Representative, and John Zach, Manager, participated for the employer. Employer Exhibit One was received as evidence.

ISSUES:

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 on September 10, 2007, and last worked for the employer as a customer service representative on February 10, 2010. The claimant left work on February 3 due to illness. When the claimant returned to work on February 6, he provided a doctor's return-to-work slip for that day (rtw) stating he was seen by a MercyCare physician on February 4.

Manager Zack reviewed the slip and concluded the return to work date of February 6 appeared to be altered. Zach called MercyCare, explained the reason for it to a representative, and he requested a check of the return to work date for the claimant. The MercyCare representative checked the records and stated the return date was February 5.

The claimant had received an associate handbook and code of business conduct employer policies. The policy provides that a dishonest act and/or falsification or deception involving a document is grounds for discipline up to and including termination. The employer concluded the

claimant falsified the MercyCare doctor slip by altering the return to work date from February 5 to February 6, and he was discharged from employment.

The claimant has received benefits on his current claim.

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 February 10, 2010 due to a violation of employer policy for dishonesty by falsifying a doctor's (return to work) slip.

The employer established by satisfactory evidence the claimant-provided doctor's slip was altered as to the return to work date from February 5 to February 6 based on observing the slip and confirming with MercyCare the actual return to work date. Since the claimant had a motive in providing a doctor's excuse that covered the period of his absence, and the slip was presented by him to the employer, a reasonable inference may be drawn that claimant knew the document had been falsified.

While the employer may have advised claimant that providing another doctor's excuse would not save his job, it does not relieve him from making an attempt to provide evidence from MercyCare that the slip had not been altered. Once the employer has presented satisfactory

evidence to establish a dishonest act, then the burden to refute that premise shifts to the claimant. The claimant has a confidential relationship with his doctor and access to personal medical records, and knowing the issue in this hearing, he could have shown the medical slip to the doctor who signed it on the issue of falsification.

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 March 1, 2010, reference 01, is reversed. The claimant was discharged for misconduct on February 10, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his 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