

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CASSANDRA M LUZUM
Claimant

APPEAL NO. 13A-UI-00600-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED STATES CELLULAR CORP
Employer

OC: 12/09/12
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, US Cellular, filed an appeal from a decision dated January 9, 2013, reference 01. The decision allowed benefits to the claimant, Cassandra Luzum. After due notice was issued, a hearing was held by telephone conference call on February 18, 2012. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Customer Service Coach Brian Vander Sloot and Human Resources Director Shelly Lawless.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Cassandra Luzum was employed by US Cellular from April 23 until December 14, 2012 as a full-time customer service representative. She received a verbal warning for absenteeism on September 17 and a final written warning on October 29, 2012, for absenteeism. The claimant had reportedly been absent due to illness. The final warning notified her that her job was in jeopardy.

On December 14, 2012, Ms. Luzum was scheduled from 5:45 a.m. until 2:15 p.m. At 6:00 a.m. she texted Customer Service Coach Brian Vander Sloot to notify him she had overslept and would be in when she could get up. The policy is for employees to call no later than 30 minutes before the start of their shift to report an absence. She further texted, "I'm fired, huh?" He responded they would talk about it when she came in.

Throughout the day Ms. Luzum texted to say she would be in "in a while" and wanted to know when he would be available to meet. At 11:35 a.m. she said she was "still trying to get up." Finally she arrived at 2:30 p.m., after her shift had ended. At that time she stated she had not been ill but had been out looking for another job because she felt she was "going to be fired anyway." Mr. Vander Sloot discharged her at that time.

Cassandra Luzum has received unemployment benefits since filing a claim with an effective date of December 9, 2012.

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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant had been advised her job was in jeopardy as a result of her absenteeism. Her absences to that point had been due to illness and properly reported and cannot be considered unexcused. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). But the final incident was due to oversleeping and that is not considered to be an excused absences. *Harlan v. IDJS*, 350 N.W.2d 192 (Iowa 1984). The absence was also not excused because she did not notify the employer prior to the start of the shift as required.

In addition, this final absence was fraudulently reported as an absence due to oversleeping and "not feeling well." Instead she was using the time off to search for another job instead of coming in to work what portion of her shift remained. The employer has the right to expect honesty and integrity from its employees. The claimant's conduct was a violation of these reasonable expectations and she is disqualified.

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.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of January 9, 2013, reference 01, is reversed. Cassandra Luzum is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css