

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JONILEE FRANSEN
Claimant

APPEAL NO. 07A-UI-04241-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED STATES CELLULAR CORP
Employer

**OC: 03/25/07 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 12, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 10, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Angie Bailey participated in the hearing on behalf of the employer Julie Melchoir. Exhibits One and Two were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer from June 23, 2003, to March 27, 2007. For at least two years, she worked as a customer service supervisor. She was informed and understood that under the employer's work rules, employees were subject to discipline for inappropriate behavior including abusive behavior directed toward an associate. She was warned on January 8, 2007, about directing inappropriate language at another employee on November 9, 2006. This was at an off-duty social event where employees, including the claimant, were consuming alcohol.

During the week of March 5, 2007, the claimant had approached another customer service supervisor about the supervisor undermining the claimant's authority with her subordinates. These subordinates had previously worked under this customer service supervisor. Every day, the claimant observed this supervisor come into the claimant's work area and ask her employees how things were going working under the claimant. The claimant requested that the supervisor stop during that.

The supervisor told management that the claimant had exhibited inappropriate behavior by coming over and throwing her purse on the supervisor's desk and telling the supervisor that they were going to "hash things out once and for all." The claimant, however, did not do what the supervisor reported to management.

On March 27, 2007, the employer discharged the claimant based on the complaint of inappropriate behavior made by the supervisor.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. No willful and substantial misconduct has been proven in this case. The claimant testified credibly that she did not throw her purse or treat the supervisor rudely or yell at her. The employer's evidence to the contrary is hearsay from individuals who did not testify at the hearing. The claimant's testimony outweighs the employer's evidence.

DECISION:

The unemployment insurance decision dated April 12, 2007, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css