

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**MELISSA R GOODEN
1807 S MAIN ST
CENTERVILLE IA 52544**

**UNITED STATES CELLULAR CORP
c/o FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-03937-B4T
OC: 03-07-04 R: 03
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

An appeal was filed on behalf of the employer from an unemployment insurance decision dated March 25, 2004, reference 01, that held, in effect, Melissa R. Gooden was discharged from her employment with United States Cellular Corporation on March 3, 2004 for no disqualifiable reason. Unemployment insurance benefits were allowed.

A telephone conference hearing was scheduled and held on April 20, 2004, pursuant to due notice. Melissa R. Gooden participated. Paige Hall and Laura Erickson responded to the notice of hearing mailed to the employer by the Appeals Section by providing telephone numbers where each could be contacted at the time of the scheduled hearing. Calls placed to the numbers provided by the employer were not answered. In addition a staff member of the

Appeals Section was asked to place calls to the identical numbers and obtained the same result, no answer.

The employer did not participate in the hearing held.

FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that: Melissa R. Gooden was employed with United States Cellular Corporation at a facility in Centerville, Iowa, on May 15, 2002. The claimant performed the job duties of a retail wireless consultant. At the time of her hire, the claimant received a copy of the employer handbook.

The claimant had never been warned that her job was in jeopardy on any occasion for any reason prior to the last incident that occurred.

On April 10, 2003, the claimant was contacted by a woman whose husband was a customer with United States Cellular Corporation. The claimant indicated that her husband desired to purchase a second phone and she made application for the phone. The customer's wife returned with the documentation signed and the claimant sold her a new cellular phone at what she believed was the husband's request. The matter came to the attention of management and the claimant was informed that she had violated a company rule by allowing the wife of a customer to purchase a new cellular phone. The claimant offered to pay for the cost of the phone and all other problems that occurred on two occasions because she did not want to lose her job. On or about March 3, 2004, the claimant held a conversation with Renita Shanahan, Manager at Centerville, Iowa. The claimant was informed that she had violated company policy in allowing the husband's wife to sign the contract and was informed that she was being discharged from her employment.

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.

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).

An employer may adopt whatever rules it desires with respect to the sale of merchandise. The record in this matter, however, does not show an intent on the part of the claimant to violate a company rule. She, in fact, was merely accommodating the wife of a husband who was the customer of United States Cellular Corporation. The claimant reasonably believed that she was accommodating the customer and allowed the sale of a new phone to take place which was placed on the customer's bill. The customer complained indicating that he had not authorized such action which resulted in the claimant's discharge.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has failed to provide any testimony or evidence relating to the alleged rule adopted by the employer and information concerning the violation of the company rule.

Under such circumstances the administrative law judge concludes that Melissa R. Gooden was discharged from her employment with United States Cellular Corporation on March 3, 2004 for no disqualifiable reason within the intent and meaning of Iowa Code Section 96.5-2-a.

DECISION:

The unemployment insurance decision dated March 25, 2004, reference 01, is affirmed. Melissa R. Gooden was discharged from her employment with United States Cellular Corporation on March 3, 2004 for no disqualifiable reason and unemployment insurance benefits are allowed Melissa R. Gooden, provided she is otherwise eligible under the provisions of the Iowa Employment Security Law.

tjc/b