

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MISTIE N MELVER**

Claimant

**APPEAL NO. 13A-UI-11994-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNITED STATES CELLULAR CORP**

Employer

**OC: 09/29/13**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated October 17, 2013, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on November 18, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Josh Melver. Chelshea Bellew participated in the hearing on behalf of the employer with a witness, Ron Kawalek. Exhibit One was 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 as a retail wireless consultant from December 27, 2010, to September 30, 2013. She received a warning for entering hours in March 2013 that she was on Family and Medical Leave Act (FMLA) leave as hours worked. She received a final written warning on August 30, 2013, for excessive absenteeism.

On September 1 the claimant was waiting on a customer and walked away a couple of times without informing the customer about what she was doing. The customer complained that she did not want to work with the claimant due to poor customer services in which she had told the customer that everything had been set up on her phone but this was untrue as contacts were not transferred and the internet did not work.

On September 24, 2013, the customer had come into the store to make a payment on a canceled account. The claimant had not dealt with the question before and became stressed out. She told the customer she was going to find someone to help, but she instead she went to the backroom to compose herself. After a while, the customer stood up and asked what the hell was going on because he was not being served. An area store manager was present. The customer told him the claimant had got up and just walked away. The area store manager found the claimant in the backroom and she told him that she had told the customer that she

was going to get help but he did not hear her. The claimant suffers from anxiety and depression and left to avoid breaking down in front of a customer.

The same day, another associate complained to the sales manager about the claimant's job performance. She told the sales manager that the claimant was telling coworkers that she was on a final warning for attendance issues and if she called in again she would be fired and would only keep her job if she left by ambulance. The claimant had been counseled in February that she was not supposed to share such information with employees.

The employer discharged the claimant on September 30, 2013, for repeated failures to following instructions and failures to provide proper customer service as described above.

**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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. The claimant stood up and left customers unattended. It seems clear that she did not make clear to the customer that their concerns would be dealt with. She violated a specific instruction when she shared information about her discipline with them. The fact that the claimant has anxiety issues does not provide an excuse for her conduct in this case.

Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

**DECISION:**

The unemployment insurance decision dated October 17, 2013, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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