

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RODNEY A JACKSON
Claimant

APPEAL NO: 11A-UI-04445-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED STATES CELLULAR CORP
Employer

OC: 02/27/11
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's March 29, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Tracy Alberts, the customer service manager, Tom Budde, a job coach, and Shelly Lawless, an associate relations manager, appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons that constitute work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in October 2008. He worked as a full-time customer service coach. When he started working he received a copy of the employer's business code of conduct. (Employer Exhibit One.) This code informs employees that the employer does not allow employees to release confidential employee information to outsiders.

While the claimant did not supervise A., he was best friends with A's boyfriend, E. On February 5, A. received permission to go home early when she did not feel well. A's coach, C.M., talked to the claimant about A's attendance and made the remark that A. missed a lot of work which could put her job in jeopardy. Prior to February 5, the claimant understood A. felt that C.M. wanted to fire her. He advised A. to talk to Alberts.

After work on February 5, the claimant went to the gym to workout. E. was there. The claimant asked how A. was feeling since he knew she had gone home early. After E. told her better, the claimant made a comment to the effect that A. needed to be careful about how much time she missed so she would have enough time to get her through until the end of the year. E. then commented that A. thought C.M. wanted to fire her. The claimant told E. that when an

employee misses a lot of work, it can become an issue, but if A. had any problems concerning her attendance or C.M., A. needed to talk to Alberts.

On February 14, A. told Budde, her job coach, that she was nervous because she thought C.M. wanted to discharge her. When the employer investigated, the employer concluded the claimant told E. that A. needed to be careful because C.M. wanted to discharge her. Also, when the employer talked to the claimant, he did not believe he violated the employer's confidentiality policy because he had not provided confidential information to E.

On March 2, 2011, the employer discharged the claimant for providing confidential information to an outsider.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

Although the employer asserted the claimant provided confidential information to E., A's boyfriend, the evidence does support this assertion. The claimant's comment that A. needed to watch her attendance so she would time off available if she needed time off later in the year may be an example of poor judgment, but his comment does not rise to the level of work-connected misconduct. The evidence does not establish the claimant told E. that C.M. wanted to discharge the claimant. He just indicated that anyone with a number of absences should be concerned and if A. had a problem with C.M. she needed to talk to Alberts. The claimant's comment to E. does not constitute work-connected misconduct.

In the alternative, if the claimant's comment would constitute work-connected misconduct, the employer did not act upon this information timely. Discharging the claimant on March 2 for a conversation he had almost a month earlier does not amount to a current act of work-connected misconduct.

The employer established business reasons for discharging the claimant, but the claimant did not commit a current act of work-connected misconduct. As of February 27, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's March 29, 2011 determination (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute a current act of work-connected misconduct. As of February 27, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css