

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRADEY L SHEEHY
Claimant

APPEAL NO. 10A-UI-05724-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED STATES CELLULAR CORP
Employer

**Original Claim: 03/07/10
Claimant: Respondent (1)**

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated March 31, 2010, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 2, 2010. The claimant participated. The employer participated by Paula Rosenbaum, associate relations representative, and Lisa Neal, coach. The record consists of the testimony of Paula Rosenbaum; the testimony of Lisa Neal; the testimony of Bradey Sheehy; and Employer's Exhibits 1 and 2.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was a senior customer service specialist in the employer's customer care center located in Cedar Rapids, Iowa. The claimant was responsible for handling customer calls when a customer service representative was not able to respond to a customer's concerns or questions. The employer refers to these calls as "escalated" calls. A customer escalates when the customer asks to speak to a supervisor. These are the calls that were then handled by the claimant.

The claimant was terminated as a result of a call she handled on March 8, 2010. The customer was upset about funds that were being held by his bank in connection with payments made to United States Cellular. The claimant told the customer that the necessary forms would be filled out to get the funds released. The customer also wanted United States Cellular to pay his overdraft charges and the claimant refused to cover those overdraft charges. The customer threatened to end his service with United States Cellular.

This call was reviewed by Lisa Neal, the claimant's supervisor, as part of a random review of calls. Ms. Neal concluded that the claimant lacked connection and empathy with the customer and that she was "rude" and sounded rushed. Ms. Neal believed that the matter should have resolved in five to ten minutes instead of 25 minutes. She reviewed the call with other management personnel and the decision was made to terminate the claimant. The claimant was informed of her termination on March 10, 2010.

At the time of her termination, the claimant was on a final written warning due to the way she handled a call in February 2010. This particular customer was upset about the amount of credits to his account. The claimant had refused to issue the customer any additional credits. This customer also threatened to take his business elsewhere. The claimant told Ms. Neal about the call and Ms. Neal listened to recording. Ms. Neal made the comment to effect of "Wow, it's as bad as you said it was." The day after the claimant told Ms. Neal about the call, Ms. Neal placed the claimant on a final written warning. There are no other warnings in the file prior to the final written warnings.

The employer has a written policy that requires employees to treat all customers with respect and to conform to the employer's values on customer service.

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes errors of judgment or discretion in isolated situations or unsatisfactory job performance. The employer has the burden of proof to show misconduct.

There is insufficient evidence in this record to establish misconduct on the part of the claimant. The claimant did not handle two customer phone calls to the employer's satisfaction and, as a result, was terminated by the employer. The claimant's job involved responding to customer complaints and concerns that could not be handled by a customer service representative. Customer complaints are not always easy to handle and threats to take one's business elsewhere are going to happen in this type of work. The employer had very high expectations on how customers would be treated and the claimant did not meet these expectations on two calls that she handled. There is no evidence that the claimant deliberately chose to be rude or dismiss these customers or violate any business code of ethics of the employer. This is an issue of job performance. The employer had the right to make a business decision to terminate the claimant. There is no evidence of misconduct that would disqualify the claimant from receiving unemployment insurance benefits. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's decision dated March 31, 2010, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw