

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER BOOTH

Claimant

APPEAL NO: 10A-UI-14968-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED STATES CELLULAR CORP

Employer

OC: 09/26/10

Claimant: Respondent (2/R)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

United States Cellular Corporation (employer) appealed an unemployment insurance decision dated October 18, 2010, reference 01, which held that Jennifer Booth (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 3, 2011. The claimant participated in the hearing. The employer participated through Paula Rozenbaum, Associate Relations Representative and Jenni Pettit, Coach. Employer's Exhibit One was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time customer service representative from August 17, 2009 through September 28, 2010. She was discharged for a repeated violation of the employer's code of conduct. The employer's code of conduct expects all employees to conduct themselves in a manner that is conducive to the long-term growth and development of the company. Such conduct includes demonstrating a considerate, helpful, and friendly attitude toward co-workers, customers and service providers and helping to promote and maintain a cordial, collaborative work environment. The claimant was given a handbook upon hire and was directive to review the policy but she additionally had four on-line training courses regarding customer service. There were two business code of conduct courses and two ethics courses on-line.

The claimant received a written warning on September 9, 2010 for violating the employer's code of conduct by speaking to a customer in a condescending tone. There were times during the telephone call that the claimant and the customer were both speaking at the same time and the claimant did not yield to the customer but instead talked over her. The warning indicated that it

was expected that the claimant demonstrate the value and behaviors expected of the organization.

The employer discharged the claimant after it was determined that she was intentionally avoiding work by logging off so she would be placed at the back of the line to take a call and by using a "not ready" button several minutes at a time which would prevent any calls from being assigned to her. The employer discovered the issue at the end of September 2010 when it was investigating why the claimant's numbers were so low. The employer has log-in and log-out reports that are completed daily but not reviewed daily and it was after the employer reviewed these reports that it saw what the claimant had been doing.

Coach Jennifer Pettit spoke with the claimant on September 24, 2010 about why she was logging off so frequently and using the "not ready" button. The claimant said that was how she was trained. Ms. Pettit then went to the trainers to ascertain whether that was how she was trained and the claimant was not trained that way. Additionally, the employer learned the claimant had been counseled about the same issue on January 26, 2010 by her previous coach. At that time, she was using her "not ready" button so she could browse Facebook and check her personal email. In addition to repeatedly violating the employer's code of conduct, the claimant had also provided false information during the investigation and she was subsequently discharged.

The claimant filed a claim for unemployment insurance benefits effective September 26, 2010 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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.

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 claimant was discharged for her repeated violation of the employer's code of conduct. She contends her actions were the result of a medical condition but the preponderance of the evidence confirms that not to be the case. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated October 18, 2010, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been

paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css