

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

NATHAN M WARNER
Claimant

**UNITED STATES CELLULAR
CORPORATION**
Employer

APPEAL NO. 14A-UI-04864-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/13/14
Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 5, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on May 30, 2014. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate. Claimant's Exhibits 1-5 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on April 16, 2014. Employer discharged claimant on April 17, 2014 because of alleged code of ethics/code of conduct violations involving misappropriation of funds. As employer did not participate in this hearing, all information received from claimant is uncontroverted.

Claimant worked as a multi store manager for employer for over 18 months. During the time of claimant's employment, employer implemented billing changes which caused difficulties during the purchasing/checkout process. In order to expedite the checkout process, claimant would create a fictitious gift card that would allow employees to avoid a double billing problem that existed within the new system. Said action was approved by claimant's supervisor, taught to other employees and store managers, and positively commented upon during claimant's yearly evaluation.

On April 17, 2014 claimant received a call from his supervisor and a human resources representative who alerted him that he was no longer employed for his actions in entering fictitious gift cards. Claimant had received no prior warnings that his actions were in violation of company policy, and received no extra income through his actions.

REASONING AND CONCLUSIONS OF LAW:

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(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 gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning an alleged code of ethics violation. Claimant was not warned concerning this policy.

The incidents, which brought about the discharge, fail to constitute misconduct because claimant's actions were done solely in an attempt to aid employer. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated May 5, 2014, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

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