

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ANN T TAYLOR
#1
356 NINTH STREET
MARION IA 52302

UNITED STATES CELLULAR CORP
c/o TALX UC EXPRESS
P O BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-09233-HT
OC: 08/01/04 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant, Ann Taylor, filed an appeal from a decision dated August 24, 2004, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on September 21, 2004. The claimant participated on her own behalf. The employer, US Cellular, participated by Human Resources Coordinator Angie Bailey and Supervisor Pam Parrish.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Ann Taylor was employed by US Cellular from

July 18, 1995 until July 29, 2004. She was a full-time customer service associate taking incoming calls. Her regular work hours were 8:00 a.m. until 5:00 p.m.

From January through June 2004 the claimant had exhausted all of her available leave time. After that she was documented for time away from her work station. On June 25, 2004, she received a verbal warning from Supervisor Pam Parrish for absenteeism, and a final written warning was issued on July 23, 2004, for being late returning to work from both of her breaks on July 21, 2004. She was notified further incidents could lead to additional disciplinary action up to and including discharge.

On July 27, 2004, the claimant logged off her phone from 4:15 p.m. until 4:28 p.m. She went to the associate break room where she made a personal phone call for roadside assistance for her car, which was in the parking lot. She had attempted to make this call earlier in the day but was told she must call a minimum of 45 minutes before the service could arrive. She did not have permission from her supervisor to log out from her phone, and did not request permission from any of the other supervisors she passed on her way to the break room. The appropriate procedure is to talk to a supervisor, advise them of the necessity of making the call, and receive permission. Usually the calls are placed from the desk of the supervisor.

Ms. Parrish was aware of the claimant's absence from her work station when she ran the work report on July 28, 2004. She talked with Ms. Taylor at that time and then notified her the matter would be referred to higher supervisors and the human resources department for possible further action. The decision was made to discharge and the claimant was notified on July 29, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant had been advised her job was in jeopardy as a result of her not being at her work station during her scheduled hours. The final warning was given less than a week before the final incident when she logged out, without permission from a supervisor, at a time when she should have been available to take incoming customer calls. There was not an emergency, only scheduling an appointment for roadside service for her car. The claimant has not established why she did not consult with one of the many supervisors in the area before logging out and going to the break room to conduct personal business. The claimant was discharged for violation of a known company rule and this is conduct not in the best interests of the employer. She is disqualified.

DECISION:

The representative's decision of August 24, 2004, reference 01, is affirmed. Ann Taylor is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible.

bgh/s