

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTY L GLASSFORD
Claimant

APPEAL NO. 07A-UI-07756-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**UNITED STATES CELLULAR
CORPORATION**
Employer

**OC: 07/08/07 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

United States Cellular Corporation (employer) appealed a representative's August 3, 2007 decision (reference 01) that concluded Christy Glassford (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 28, 2007. The claimant participated personally. The employer participated by Angie Baily, Associate Relations Representative; Mike Flockhart, Customer Service Coach; and Tracy Alberts, Interim Customer Relations Manager. The employer offered one exhibit which was marked for identification as Exhibit One. Exhibit One was received into evidence.

ISSUE:

The issue is whether the 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 that: The claimant was hired on July 31, 2006, as a full-time customer service representative. The claimant signed for receipt of the company handbook on July 31, 2006. The employer issued the claimant warnings on March 26 and 31, 2007, for attendance. The claimant was absent due to lack of childcare. On April 18, 2007, the employer issued the claimant a final written warning for attendance. The claimant was absent due to a properly reported illness on April 15, 2007, but had exhausted her allotted sick leave. The employer warned the claimant that further infractions could result in her termination from employment.

On July 1, 2007, the claimant suffered from low blood sugar and became unconscious. Her husband administered insulin. Later he told her he had called an ambulance but called it off when she came around. The husband left the claimant on her couch. After the incident he was not on speaking terms with the claimant. When she was able, the claimant notified the employer of her situation and that she would be unable to work. The claimant was unclear about what had happened because of the nature of her illness. The following day the claimant reported to work.

The employer asked the claimant to provide documentation from the ambulance company that an ambulance had been dispatched to the claimant's home. The claimant was unable to obtain the confirmation and told the employer she was uncertain her husband had been truthful about calling the ambulance. The claimant went to her physician on July 4, 2007, because her insulin level was not healthy. He signed a note indicating the claimant had a diabetic episode on July 1, 2007, and released her to return to work on July 2, 2007. The employer required a note from the ambulance company by July 9, 2007. The claimant was unable to locate the company and the employer terminated the claimant on July 10, 2007, for excessive absenteeism.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident of absence was a properly reported illness which occurred on July 1, 2007. The claimant's absence does not amount to job misconduct because it was properly reported. The claimant provided a doctor's note which should have been sufficient for the employer. Any ambiguity in the details of the claimant's statement to the employer can be explained by the nature of her illness. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's August 3, 2007 decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css