

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHAILA M HICKEY**  
Claimant

**APPEAL NO. 07A-UI-06057-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNITED STATES CELLULAR  
CORPORATION**  
Employer

**OC: 05/20/07 R: 04  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

United States Cellular Corporation (employer) appealed a representative's June 5, 2007 decision (reference 01) that concluded Shaila Hickey (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 July 3, 2007. The claimant participated personally. The employer did not provide a telephone number where it could be reached and, therefore, did not participate.

**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 January 24, 2005, as a part-time retail wireless consultant. On May 21, 2007, the employer discovered the cash register drawer was short and investigated. The employer saw the claimant on a video recording taking money from the register and walking away. \$48.15 was missing from the register. The claimant viewed the recording and had no plausible reason for her actions. The employer terminated the claimant on May 21, 2007.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. She intentionally took money from the employer for her own purposes. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

**DECISION:**

The representative's June 5, 2007 decision (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 has been paid wages for insured

work equal to ten times her weekly benefit amount provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,800.00.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/css