

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTOPHER R OETKER**  
Claimant

**APPEAL NO. 10A-UI-10660-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNITED STATES CELLULAR CORP**  
Employer

**OC: 06-20-10**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the July 19, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 17, 2010. The claimant did participate. The employer did participate through Shelly Lawless, Associate Relations Manager; Rodney Jackson, Help Desk Coach; and Jenni Pettit, Customer Service Coach. Employer's Exhibit One was entered and received into the record.

**ISSUE:**

Was the claimant discharged due to job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a help desk associate full time beginning August 14, 2006 through June 25, 2010 when he was discharged. The claimant was discharged for allegedly telling two other employees, one of whom was Jennie Pettit, that the leaders in the help desk were lazy and that she should not listen to anything they told her. Ms. Pettit, who was a new 'coach' eventually reported the conversation to upper management.

Prior to this time on April 22, 2010 the claimant had been placed on a final written warning for problems with his attitude and negative actions in the office. The claimant was then on a leave of absence from May 3 to June 2. He returned to work with a positive attitude about work. According the employer the claimant allegedly made the negative statements on June 9 or 10. Mr. Jackson, the claimant's direct supervisor asked the claimant about the conversation on June 23. The claimant denied making any negative comments about any person or telling any other employees not to listen to managers. There was another employee who also reported to the employer that she heard the claimant make the comments, but the employer refused to provide her name for the hearing, nor did she provide testimony at the hearing.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer chose not to provide testimony from the other witness who allegedly heard the claimant make the disparaging remarks. The claimant denied the comments. 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 issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351

N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Under the circumstances the administrative law judge cannot conclude that the claimant made the comments. As such, the employer has not met their burden of proof and benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The July 19, 2010 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/css