

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

JAMIE N HINDLEY
532 – 53RD PL
WEST DES MOINES IA 50266 7255

UNITED STATES CELLULAR CORP
C/o FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-02374-H2T
OC: 01-22-06 R: 02
Claimant: Respondent (2)

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/Misconduct
Section 96.3-7 - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 13, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 16, 2006. The claimant did participate. The employer did participate through Gilbert Nunez, Agent Manager and (representative) Lisa Dougall, Agent Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as an agent account executive full time beginning July 5, 2000 through January 26, 2006 when she was discharged.

On January 25, the claimant was asked a series of questions by Lisa Dougall, her supervisor. The claimant was asked if she was working a second job like another associate, Greg, selling an Amway like product over the internet. The claimant said no she was not involved in selling the Amway like product, but her mother and her sister were. Ms. Dougall then asked the claimant if she had gone to the conference in Tennessee over the weekend. The claimant said no, she had not gone to Tennessee but had gone to Texas. The conversation ended and the claimant returned to the meeting she was attending.

Ms. Dougall was sure that she had seen on the claimant's calendar that she was going to Tennessee not Texas. Ms. Dougall pulled up the claimant's calendar and noted that the calendar indicated the claimant was going to Tennessee not to Texas. At that point, Ms. Dougall called Greg, the claimant's co-worker, out of the same meeting the claimant was attending and asked him if the claimant was working at selling the same Amway type products he was selling. He told her yes, she was. Ms. Dougall then asked if the claimant had attended the conference in Tennessee and Greg told her that yes, the claimant had been at that meeting. Ms. Dougall then spoke to Gilbert Nunez about what she suspected.

Together Ms. Dougall and Mr. Nunez spoke to the claimant and again asked the claimant if she had gone to Tennessee to participate in the conference. The claimant again denied that she had gone to Tennessee and that she was selling Amway type products like her co-worker Greg. The claimant denied that any other of her associates were involved in the business.

Mr. Nunez then asked the claimant if her phone records would show that she was in Tennessee. After being confronted with her phone records, the claimant admitted that she had in fact gone to Tennessee and that she was involved in marketing/selling the Amway products like her co-worker Greg. The claimant also admitted that one of her co-workers, Rachel Devries, was working with her selling the products. The claimant then admitted that she had not been honest with Ms. Dougall when she questioned her earlier in the day.

The employer has a policy that if an employee has another job, they are obligated to reveal the details to the employer so the employer can insure that there is no conflict of interest and that United States Cellular equipment is used only for their business purposes.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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.

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 was not going to be disciplined for holding another job. The employer was just inquiring as to the details so they could reiterate to the claimant her need to insure that the employer's business equipment was only used for United States Cellular business. The claimant was dishonest with the employer about her attendance at a conference and about whether she was working at another job. The claimant owed the employer honest answers to their questions. Since the claimant is required to work independently, the employer no longer felt they could trust her since she had not answered their questions truthfully. The administrative law judge is persuaded that the claimant was initially dishonest and deceptive in the answers she provided to the employer's questions. Her dishonesty constitutes disqualifying misconduct. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The February 13, 2006, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and 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 \$1,177.00.

tkh/kkf