

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

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UNITED STATES CELLULAR CORP
c/o FRICK UC EXPRESS
PO BOX 283
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Appeal Number: 05A-UI-12074-H2T
OC: 10-09-05 R: 01
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 November 14, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 14, 2005. The claimant did participate. The employer did participate through Stephanie Hood, Sales Supervisor, and Bonnie Hruska, Store Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a retail wireless consultant full time beginning October 27, 2000 through October 5, 2005, when she was discharged.

The claimant was discharged for accessing the cellular account of her son. The claimant sold her son a new cell phone and updated his account on September 14. On that same day the claimant also ran credit check on her son in order to update and start his account. The claimant's son is 30 years old and does not live in her home. The claimant asked another employee to do the activation of her son's account. According to the employer's policy the claimant was not allowed to access, view, or make changes to any account belonging to any family member or friend, regardless of whether the person resided in her home. The claimant alleges that she thought it was ok to work on her son's account because he did not live in her home. The claimant had another employee, not related to her or her son, do the activation of the account, although the claimant kept the account listed under her employee number so she would receive the commission for the sale.

The claimant was given a copy of the policy in an e-mail dated April 19 and again in an e-mail sent to her and all other employees dated September 9, 2005. Three other employees have been discharged for the same or similar conduct. The claimant had never previously been disciplined for violating the employer's policies.

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 argues that she thought it was acceptable to work on a family member's account so long as the family member did not live in her household. The employer alleges that all employees, including the claimant, knew or should have known the policy that expressly prohibited work on any family members account no matter where they lived, because the policy had been distributed to all employees on two separate occasions, the most recent being September 9. If the claimant really believed it was acceptable to work on her son's account, then her action of having another associate use her employee ID to activate the account does not make sense. The only logical explanation for having another employee activate the account, but leave her employee ID on the account for the sales commission credit, was to attempt to lead the employer to believe that she was not working on a family member's account. If, as the claimant contends, she really thought it was ok to work on her son's account since he did not live with her, then she would not have asked another employee to use her employee ID number to activate the account. The claimant's deceptive action convinces the administrative law judge that she knew she was not to be working on her sons account regardless of whether he lived with her or not. The claimant violated a clear policy of the employer and her action is misconduct sufficient to disqualify her from receiving unemployment insurance benefits. 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 November 14, 2005, 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 \$3,240.00.

tkh/kjw