

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNY L HAVEL
Claimant

APPEAL NO. 08A-UI-10593-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED STATES CELLULAR CORP
Employer

OC: 10/05/08 R: 03
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

United States Cellular Corporation (USCC) filed an appeal from a representative's decision dated October 30, 2008, reference 01, which held that no disqualification would be imposed regarding Jenny Havel's separation from employment. After due notice was issued, a hearing was held by telephone on December 1, 2008. Ms. Havel participated personally. The employer participated by Shelly Lawless, Associate Relations Manager, and Shannon McNamara, Customer Service Coach. Exhibits One, Two, and Three were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Havel was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Havel was employed by USCC from October 7, 2002 until October 8, 2008 as a full-time customer service representative (CSR). She was discharged for deliberately taking steps to avoid work. As a CSR, Ms. Havel received in-bound calls from USCC customers. Calls are automatically routed to any available CSR. There are three buttons a CSR can push to avoid taking calls. One such button is the "not ready" button, which is usually used when the CSR is completing documentation for the call just completed. The CSR can also use the "make busy" button, which is usually used when the CSR is away from the work station. The final button is "outbound," which is used when the CSR needs to place an outgoing call.

The employer pulled RTA (Real Time Adherence) reports for CSRs to determine why the call volume was high. In reviewing the RTA for Ms. Havel, the employer noted that she had a high number of occasions on which she was not available for calls. It was determined that she had 179 minutes during which she was not available for calls over a two-day period. For the most part, she had used the "outbound" button to avoid calls. The RTA report identifies outgoing calls

with a “dno” designation, which means “dialing number out.” None of the 179 minutes referred to above were for calls actually placed out. It was the employer’s belief that Ms. Havel was simply listening to a dial tone and not actually placing or receiving calls during the 179 minutes at issue.

Ms. Havel had previously been counseled because her “not ready” time was considered excessive. After running the RTA report in September, the employer spoke with her on September 25. Ms. Havel indicated she did not know what was going on with respect to the RTA report. The employer then ran a second report, which revealed the same information. The employer also discovered that the conduct involved other CSRs in five different USCC locations. The employer wanted to make sure the problem was being addressed consistently at all locations and, therefore, had to involve upper management. Ms. Havel was notified of her discharge on October 8, 2008.

Ms. Havel filed a claim for job insurance benefits effective October 5, 2008. She has received a total of \$2,293.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). For reasons that follow, the administrative law judge concludes that the employer has satisfied its burden of proof. Ms. Havel was discharged for deliberately and intentionally taking steps to avoid work. Her actions negatively impacted customer service as it resulted in the customers who may have been directed to her having to wait for another CSR to become available. Unwarranted delays are not in the employer’s best interest of providing prompt service.

Not only did Ms. Havel's actions impact customer service, it also resulted in her receiving pay for time not actually spent working. She was paid for three hours that were not actually devoted to providing service for USCC. The employer expected her to be responding to calls, not merely sitting at her desk. Based on the prior conversations she had with her supervisor about excessive “not ready” time, Ms. Havel knew or should have known that not being available for customer calls was contrary to the employer’s expectations. For the reasons cited herein, the administrative law judge concludes that substantial misconduct has been established by the evidence. As such, benefits are denied.

Ms. Havel has received benefits since filing her claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If an overpayment results from the reversal of an award of benefits based on an individual’s separation from employment, it may be waived under certain circumstances. Benefits will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if Ms. Havel will be required to repay benefits already received.

DECISION:

The representative's decision dated October 30, 2008, reference 01, is hereby reversed. Ms. Havel was discharged by USCC for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Havel will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs