

**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**

**AARON A BURKS
721 GROVELAND PL
DUBUQUE IA 52001**

**NEXT GENERATION WIRELESS INC
PO BOX 188
CEDAR FALLS IA 50613**

**Appeal Number: 05A-UI-02308-CT
OC: 01/23/05 R: 04
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 for Misconduct

STATEMENT OF THE CASE:

Next Generation Wireless, Inc. filed an appeal from a representative's decision dated February 25, 2005, reference 01, which held that no disqualification would be imposed regarding Aaron Burks' separation from employment. After due notice was issued, a hearing was held by telephone on March 22, 2005. The employer participated by Bill Bradford, Owner; Heather Webb, Area Sales Manager; and Mike Dekruif, General Manager. Exhibits One and Two were admitted on the employer's behalf. Mr. Burks did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Burks was employed by Next Generation Wireless, Inc. from October 27 until December 27, 2004 as a part-time retail associate. He was discharged during the 90-day probationary period because he would not cooperate with training and for violating the employer's policy regarding internet usage.

Part of the employer's in-house training consists of having new hires monitor those who have already been trained. Mr. Burks would not always shadow other associates as required. He would sometimes be found in other areas rather than monitoring the sales activities of others. He was admonished that he needed to complete the training before he could start making sales on his own.

The employer has a written policy, of which Mr. Burks was aware, that prohibits using the internet for other than work purposes. Employees were warned in team meetings that they were not to use the internet for personal purposes. When questioned as to whether he had accessed the internet for personal use, Mr. Burks denied having done so. However, the employer discovered that he had downloaded games on the work computer. Mr. Burks was notified of his discharge on December 27, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Burks was separated from employment for any disqualifying reason. 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). Part of the reason for Mr. Burks' discharge was his failure to cooperate in training. The employer had the right to expect that he would participate so that he would be effective in sales once his training was completed.

The other reason for Mr. Burks' discharge was the fact that he violated the employer's policy regarding internet usage. He had been warned in team meetings that the internet was reserved for work-related use. In spite of the warning, Mr. Burks downloaded games on the work computer. When questioned by the employer he denied it, but did advise coworkers that he had downloaded games. The only reason to download games on the work computer would be to play those games at work.

The administrative law judge concludes that Mr. Burks' failure to cooperate with training and his unauthorized internet usage constituted a substantial disregard of the standards he knew the employer expected of him. It is concluded, therefore, that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied. No overpayment results from this reversal of the prior allowance as Mr. Burks has not claimed benefits since filing his claim effective January 23, 2005.

DECISION:

The representative's decision dated February 25, 2005, reference 01, is hereby reversed. Mr. Burks was discharged for misconduct in connection with his employment. Benefits are

withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/tjc