

**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**

**THOMAS R SAGE
4225 SUNLAND CT SE
CEDAR RAPIDS IA 52403**

**UNITED STATES CELLULAR CORP
% TALX UC EXPRESS
P O BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-02460-CT
OC: 10/26/03 R: 03
Claimant: Respondent (1)**

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:

United States Cellular Corporation (USCC) filed an appeal from a representative's decision dated February 23, 2004, reference 03, which held that no disqualification would be imposed regarding Thomas Sage's separation from employment. After due notice was issued, a hearing was held by telephone on March 25, 2004. Mr. Sage participated personally. The employer participated by Shelly Lawless, Associate Relations Manager, and Travis Lee, Customer Service Supervisor.

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. Sage was employed by USCC from December 8, 2003 until January 15, 2004 as a full-time customer service representative. He was discharged because of his job performance and for what the employer considered to be harassing behavior towards the individual mentoring him.

Mr. Sage successfully completed the first phase of his training and was moved to working one-on-one with a mentor on January 7. He was not always meeting the employer's quality standards with respect to his handling of customer calls. He did not always thank the customer for holding on the line and did not always analyze rate plans for customers. He also disconnected callers on some occasions. He had not been warned that his performance was jeopardizing his continued employment with USCC.

The decision to discharge Mr. Sage was prompted by a complaint received from his mentor on January 15. He had worked with this mentor, Misty, beginning January 13. He asked her to lunch on January 13 and 14 and she declined on both occasions. Misty felt Mr. Sage was bitter towards her because of her refusals to go to lunch with him. She felt he was deliberately disregarding quality standards in retaliation for her not going to lunch with him. As a result of her complaint, Mr. Sage was discharged the same day.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Sage 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 in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Part of the reason for Mr. Sage's discharge was the coworker's complaint that he was harassing her in retaliation for not going to lunch with him. The employer's evidence failed to establish that Mr. Sage was, in fact, retaliating against his mentor. It was Misty's belief that he was deliberately not meeting quality standards because of her refusal to go to lunch with him. However, the problems she identified in his performance were similar to those identified by others. Therefore, it is concluded that his failures were not because of her refusal of his invitation for lunch.

Mr. Sage was also discharged because he did not meet the employer's performance standards. He was in the employment for six weeks and was still in training. It is unreasonable to expect total perfection in performance while an individual is still in training. The administrative law judge believes Mr. Sage was working to the best of his abilities in an attempt to meet the employer's standards. The employer's evidence failed to establish that he deliberately and intentionally acted in a manner he knew to be contrary to the employer's interests or standards. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated February 23, 2004, reference 03, is hereby affirmed. Mr. Sage was discharged by USCC but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/d