

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

MARQUES A SMITH  
3305 AGIN CT NE #4  
CEDAR RAPIDS IA 52402-8809

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

Appeal Number: 06A-UI-04040-CT  
OC: 03/12/06 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(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 March 30, 2006, reference 01, which held that no disqualification would be imposed regarding Marques Smith's separation from employment. After due notice was issued, a hearing was held by telephone on May 1, 2006. Mr. Smith participated personally. The employer participated by Angie Bailey, Human Resources, and Tim Garthwaite, Business-to-Business Coach.

#### 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: Mr. Smith was employed by USCC from January 6, 2003 until March 15, 2006. He was last employed full time as a senior customer service specialist in the business-to-business department. He was discharged after he violated a known company standard.

When handling business accounts, Mr. Smith was to have the customer verify the business entity by giving a password, tax identification number, or billing address. He was to verify that he was speaking with a representative of the business before giving out specific account information. On March 3, Mr. Smith told the customer how much time was remaining on the contract with USCC without first going through the verification process. He also cancelled one of the customer's lines as requested by the customer but without first verifying that he an individual on the line who was authorized to cancel lines. On March 6, the job coach sent an e-mail to Mr. Smith reminding him that he had violated policies on the call and that he should avoid such actions in the future. The coach also advised his manager of the problem on March 9.

The verification process had always been a requirement of the job. However, as of January of 2006, the employer began a policy of zero tolerance for the failure to conduct verifications. Employees were notified of the change through e-mails on January 13 and January 23, 2006. There was also a group meeting on January 26, 2006 to address the new policy. Mr. Smith's failure to obtain verifications on March 3, 2006 was the sole reason for his discharge.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Smith 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). Mr. Smith was discharged because he failed to obtain the necessary verifications when speaking with a customer on March 3, 2006. The administrative law judge does not believe he deliberately and intentionally failed to utilize the correct procedures. However, he was negligent in giving out confidential information and canceling a line without making sure he had the appropriate personnel on the line. An isolated instance of negligence is not sufficient to establish disqualifying misconduct. See Henry v. Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986).

The administrative law judge appreciates that the employer had a zero tolerance policy. While the employer may have had good cause to discharge Mr. Smith for his violation of policy, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, the administrative law judge concludes that the employer has failed to establish disqualifying misconduct within the meaning of the law. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated March 30, 2006, reference 01, is hereby affirmed. Mr. Smith was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/tjc