

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

NICOLE FREIBURGER
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DUBUQUE IA 52002-3723

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

Appeal Number: 06A-UI-06101-DWT
OC: 05/14/06 R: 04
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

STATEMENT OF THE CASE:

United States Cellular Corporation (employer) appealed a representative's June 2, 2006 decision (reference 01) that concluded Nicole Freiburger (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 5, 2006. The claimant participated in the hearing. Dennis LeRoy and Keith Neilsen, the store manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 4, 2002. The claimant worked part time. The claimant's supervisor was Tamara Henson.

On January 9, 2006, the claimant signed the employer's friends and family policy. Neilsen then gave her a copy of the policy. The employer's policy informs employees they cannot access a friend or family member's account or the employer will discharge the employee.

Although the claimant understood she could not do anything on a family member's account, she saw other employees go into the account of friends for various reasons and were not disciplined. The claimant dated a former employee, who had several friends at the store where the claimant worked. An employee, who was a friend of the former employee, serviced the former employee's account and received a commission even though the former employee was a friend.

On April 20, the claimant called customer service on her boyfriend's behalf (the former employee) to see if a \$15.00 fee could be waived after he changed phones. The claimant did nothing to his account on April 20. On April 21, the claimant asked her supervisor if the claimant could add a download feature on the former employee's account because he wanted it. The claimant's supervisor gave the claimant permission to add the feature. The claimant understood that her supervisor knew the former employee was the claimant's friend and that she was dating him at the time. Later, the download feature was removed at the former employee's request. As a result of removing the feature, the claimant did not receive any commission for this transaction.

On May 9, the employer discovered the claimant accessed the former employee, a friend's account on April 21. When the employer questioned the claimant, she indicated she did not understand that she could be discharged for the April 21 incident when she added a download feature to a friend's account.

Even though the claimant's employment was not in jeopardy prior to April 21, the employer discharged the claimant on May 16 for violating the employer's friends and family policy that day.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Based on the employer's policy, the employer established compelling business reasons for discharging the claimant. Since the claimant's job was not in jeopardy prior to April 20, an isolated incident where she added a download feature to "friend's account" with the knowledge of her immediate supervisor does not constitute work-connected misconduct. Therefore, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's June 2, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of May 14, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs