

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KARLEENE R WALTERS
Claimant

APPEAL NO. 08A-UI-06499-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED STATES CELLULAR CORP
Employer

**OC: 05/25/08 R: 03
Claimant: Respondent (1)**

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 July 7, 2008, reference 01, which held that no disqualification would be imposed regarding Karleene Walters' separation from employment. After due notice was issued, a hearing was held by telephone on July 30, 2008. Ms. Walters participated personally. The employer participated by Tabatha McKay, Regional Training Manager.

ISSUE:

At issue in this matter is whether Ms. Walters 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. Walters was employed by USCC from May 16, 2002 until May 16, 2008. She was last employed full time as an instructor, a position she assumed in January of 2008. During the week of May 5, members of her training class made plans to get together after work on May 9 to celebrate the end of training. Ms. Walters was invited to attend.

Members of the training class, along with family and friends, got together at a local bowling alley after work on May 9. During the event, Ms. Walters purchased a pitcher of beer for herself. A member of the training class asked if he could have some of it and she indicated he could. As it turned out, this individual was not of legal age. He had been a member of Ms. Walters' training class for five weeks. During the training, she was not provided any material that would have disclosed the individual's age. The next week, it was reported to the employer that Ms. Walters had served beer to a minor.

A former USCC employee attended the gathering and brought a male friend. Ms. Walters verbally admired the friend's biceps and asked if she could touch them. She referred to his

biceps as either “beautiful” or “sexy.” It was reported the following week that she was groping the male. Ms. Walters’ conduct in allowing the minor to have beer and feeling the individual’s biceps was considered a violation of the employer’s standards. Therefore, she was discharged on May 16, 2008. She had not previously been advised that her continued employment with USCC was in jeopardy for any reason.

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). Ms. Walters was discharged due to conduct that occurred on May 9, 2008 away from work. Although the gathering was planned by and consisted mostly of USCC employees, it was not an employer-sponsored event. A small group of employees decided to get together after work to celebrate the end of training. The employer’s “Code of Business Conduct” does not make it clear that an individual’s off-duty conduct may result in the loss of employment. For the above reasons, the administrative law judge concludes that Ms. Walters’ conduct of May 9 was not in connection with her employment as required by the Iowa Employment Security Law.

Even if the administrative law judge were to conclude that the conduct was in connection with the employment, there would still be no basis for disqualification. The evidence failed to establish to a certainty that Ms. Walters was aware the individual was not of legal age. The issue of his age would not necessarily have come up during the training sessions. She did not have any written materials from the employer that would have caused her to be aware of his age. The administrative law judge concludes that Ms. Walters did not deliberately and intentionally serve alcohol to a minor on May 9. It was unreasonable to expect her to request proof of age before allowing a coworker to consume some of her beer.

The allegation that Ms. Walters was groping a male has not been established. She acknowledged that she touched his biceps after being given permission to do so. Her statement that the biceps were either beautiful or sexy was not conduct so outrageous that she knew or should have known others would be offended. The employer did not present testimony or evidence from any individual who was present at the bowling alley on May 9. The evidence failed to establish that Ms. Walters did anything other than touch the individual’s biceps and comment on them. Her actions did not constitute misconduct.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that disqualifying misconduct has not been established. While the employer may have had good cause to discharge, 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 cited herein, benefits are allowed.

DECISION:

The representative's decision dated July 7, 2008, reference 01, is hereby affirmed. Ms. Walters was discharged but misconduct in connection with the employment has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css