

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

CHRIS G BOOTHE
PO BOX 101
SWISHER IA 52338-0101

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

Appeal Number: 06A-UI-01103-HT
OC: 01/01/06 R: 03
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
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, United States Cellular, filed an appeal from a decision dated January 19, 2006, reference 01. The decision allowed benefits to the claimant, Chris Boothe. After due notice was issued a hearing was held by telephone conference call on February 15, 2006. The claimant participated on his own behalf. The employer participated by Direct Sales Manager Ken Christlieb.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Chris Boothe was employed by United States Cellular from February 2, 2004 until January 3, 2006. He was a full-time business consultant. As a part of his job he would occasionally receive "trade in" or "swapped" phones from customers who either wanted new ones or did not like a recently purchased phone and wanted another model. The usual course of action was to return the "nearly new" phones to the office for resale or to take the older models and return them to the inventory.

On January 1, 2006, District Sales Manager Ken Christlieb was informed by another associate that the claimant had been selling the company phones on e-bay, and gave the user name under which the items were sold. The employer checked and found a total of nine phones being sold under "husbandsprincess." The district manager consulted with the human resources department and his leader, and he was told to set up a meeting with the claimant when he returned to work after vacation.

On January 3, 2006, Mr. Christlieb and another manager met with the claimant about the allegations. He acknowledged that the user name was one his wife, Amber Boothe, used and she sold a lot of things on e-bay but he had no knowledge of the sale of the phones. She had supposedly found them "lying around the house" and thought they were "junk phones." But she did advertise them on e-bay as being "new in box."

When questioned he was unable to establish how the phones got into his house, he had either brought them in out of his vehicle or his wife had. He thought perhaps she had believed them to be old phones she had acquired when she worked at another cellular phone company some time before, and only asserted she put "new in box" on the ads because that made things sell better, even if they were, in fact, neither new nor in the box.

Mr. Boothe was asked to write a statement and he began it by saying he had learned of his wife's sale of the phones on December 23, 2005. However, even though he had learned of her activities at that time, he made no effort to try and contact anyone at United States Cellular and inform them of the situation. He did not even try to tell Mr. Christlieb when he returned to work on January 3, 2006, but instead waited to say anything until he was summoned into the meeting and questioned about it.

The employer consulted with the human resources department again after the meeting with the claimant. He was discharged for unethical behavior and theft of company property.

Chris Boothe has received unemployment benefits since filing a claim with an effective date of January 1, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant has attempted to place all the blame on his wife for the sale of the employer's cell phones. The administrative law judge finds it hard to believe that Amber Boothe would be so completely unaware that the phones she was selling were new models and therefore not "junk phones" she had brought with her from a previous job. It is also hard to accept that she could have taken the phones out of Mr. Boothe's vehicle and not known these were not "junk phones." If she thought they were junk phones, she nonetheless advertised them for sale as "new in box."

It is also hard to accept that Mr. Boothe did not notice the phones were not in his car, or that his wife was photographing, wrapping and shipping these phones from their home. Whether or not she only monitored her e-bay account while he was at work, the phones would certainly have been visible to him at some point whether she was on the computer or not. He apparently never questioned her as to what she was doing with company phones.

All in all, the administrative law judge does not find the claimant's explanations to be credible. His story changed from time to time, first saying he had no idea his wife had sold the phones before he was fired, then writing a statement to the employer, which said he knew as of December 23, 2005. At the very least the claimant is guilty of not securing the assets of his employer and at the worst, he is guilty of collusion in the sale of property belonging to United States Cellular. In either case it is a violation of the duties and responsibilities an employer has

the right to expect of an employee. It is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of January 19, 2006, reference 01, is reversed. Chris Boothe is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$1,981.00.

bgh/pjs