

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

JOHN KALTENBACH
3111 E AVE NE
CEDAR RAPIDS IA 52402

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

Appeal Number: 05A-UI-01270-JTT
OC: 01/02/05 R: 03
Claimant: Appellant (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:

John Kaltenbach filed a timely appeal from the January 25, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 21, 2005. Mr. Kaltenbach participated in the hearing. United States Cellular participated through Angie Baily, Human Resources, with witness Mark Ladage, Manager/Coach. Exhibits One, Two, and Three were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: John Kaltenbach was employed by United States Cellular as a full-time customer service representative from April 5, 2004 until November 12, 2004, when Customer Service

Managers/Coaches Mark Ladage and Angie Albright discharged him for misconduct based on Mr. Kaltenbach's use of profanity in violation of the employer's Code of Business Conduct.

The final incident that prompted Mr. Kaltenbach's discharge occurred on November 10, 2004. On that day, towards the end of the evening shift, Mr. Ladage attempted to deliver to Mr. Kaltenbach a "Final Written Warning" for use of inappropriate remarks and/or language. The reprimand addressed incidents that occurred on October 22 and October 29. At the time Mr. Ladage attempted to discuss the final warning with Mr. Kaltenbach and get his signature on the reprimand, Mr. Kaltenbach indicated that he did not want to discuss the matter any further, took the reprimand in hand and returned to his work station. Because he got angry and had not allowed Mr. Ladage to finish discussing the reprimand with him, Mr. Kaltenbach was unaware that he had taken the original that he needed to sign and return to Mr. Ladage. Mr. Ladage approached Mr. Kaltenbach at his workstation and indicated that he needed the original document back. At that point, Mr. Kaltenbach repeatedly uttered the statement: "Basically, I'm fucked." and/or "This is fucking bullshit." Mr. Ladage indicated to Mr. Kaltenbach that his behavior at the moment was not helping matters. Mr. Kaltenbach's tone, volume, and behavior were such that another manager/coach some distance away felt compelled to assist Mr. Ladage in dealing with Mr. Kaltenbach. The managers escorted Mr. Ladage out of the call-center area and into an office to further discuss the matter. Mr. Kaltenbach continued to use the same profanity during that discussion. At this point, Mr. Ladage advised Mr. Kaltenbach that he was being placed on suspension while the employer decided his future employment status. On November 12, after Mr. Ladage had consulted with his superiors and with the human resources department, he met with Mr. Kaltenbach and advised him that he was being discharged from the employment.

The employer utilizes an Associate Handbook, which contains the employer's Code of Business Conduct and policy against harassment. On April 2, 2004, Mr. Kaltenbach signed an acknowledgment of receipt of the employee handbook and his obligation to follow the policies contained therein. See Exhibit One. On April 16, 2004, Mr. Kaltenbach signed a separate acknowledgment that was specific to the Code of Professional Conduct. See Exhibit Two. The employer's written policy regarding "Rule Violations" indicates that, "U.S. Cellular expects associates to conduct themselves in an appropriate and professional manner." The employer's written policy regarding "Irresponsible Actions" prohibits use of "profanity or abusive behavior directed toward any customer, vendor, visitor, or associate." The employer's written policy regarding "Un-Businesslike Conduct" indicates that any violation of the employer's "Harassment Policy" is considered to be "un-businesslike conduct."

On October 22, Mr. Kaltenbach participated in a "team meeting" with Mr. Ladage and approximately a dozen other customer service representatives. A new employee was present at the meeting. Mr. Kaltenbach asked the new employee to tell the group about herself. The new employee indicated hers was the car in the parking lot that had a partially nude female painted on the exterior, but that she was not a lesbian. Mr. Kaltenbach remarked that she had just offended a whole row of lesbians, meaning the other associates, male and female, who were present at the meeting.

On October 29, Mr. Kaltenbach participated in another meeting, at which Mr. Ladage, and approximately a dozen other associates were present. Mr. Kaltenbach was asked by the person conducting the meeting whether he had ever been asked to perform a particular task. Mr. Kaltenbach's response was a light-hearted, "Fuck, no." Mr. Kaltenbach was immediately aware of the inappropriateness of his comment and apologized to Mr. Ladage after the meeting.

Under the company's policies and procedures, Mr. Ladage had to check with his superiors and with the Human Resources Department before he engaged in any discipline of Mr. Kaltenbach. Thus, the reprimand issued to Mr. Kaltenbach on November 10 was the first Mr. Ladage had discussed with Mr. Kaltenbach the incidents of inappropriate language on October 22 and 29.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record indicates that Mr. Kaltenbach was discharged for misconduct in connection with his employment.

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).

Because Mr. Kaltenbach was discharged, the employer bears the burden of proof in this matter. See Iowa Code section 96.6(2). An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. Warrell v. Iowa Dept. of

Job Service, 356 N.W.2d 587 (Iowa Ct. App. 1984). An isolated incident of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits, if it serves to undermine a superior's authority. Deever v. Hawkeye Window Cleaning, Inc., 447 N.W.2d 418 (Iowa Ct. App. 1989).

The evidence in the record, set forth in the Findings of Fact, establishes that Mr. Kaltenbach used offensive language and/or profanity at work on three separate occasions within a two to three-week period. Mr. Kaltenbach's work as a telephone customer service representative working in an office environment with other telephone customer service representatives made it imperative that Mr. Kaltenbach refrain from such conduct. The employer's written policies explicitly set forth this requirement. On October 22, Mr. Kaltenbach was apparently aware of the inappropriateness of the new employee's remark before he made his own inappropriate comment. On October 29, Mr. Kaltenbach was aware of the inappropriateness of his use of profanity at the time he uttered it. This is indicated by his apology to Mr. Ladage immediately afterwards. Mr. Kaltenbach's use of profanity on November 10 was a direct challenge to the authority of Mr. Ladage to discipline him for the prior incidents. Not only did Mr. Kaltenbach repeatedly engage in offensive language, he did so in the presence of many others, and, on at least two occasions, in the middle of a business meeting.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Kaltenbach was discharged for misconduct in connection with his employment. Accordingly, a disqualification will enter.

DECISION:

The representative's decision dated January 25, 2005, reference 01, is affirmed. The claimant is disqualified for benefits until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount.

jt/sc