

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

WESLEY R SPANIER
3215 PIONEER AVE #4
CEDAR RAPIDS IA 52403

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

Appeal Number: 05A-UI-11470-CT
OC: 10/09/05 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, 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:

United States Cellular Corporation (USCC) filed an appeal from a representative's decision dated October 27, 2005, reference 01, which held that no disqualification would be imposed regarding Wesley Spanier's separation from employment. After due notice was issued, a hearing was held by telephone on November 29, 2005. Mr. Spanier participated personally. The employer participated by Stephanie Simpson, Customer Service 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. Spanier was employed by USCC from February 2, 2004 until October 11, 2005 as a full-time customer service representative. On

October 7, 2005, he was in a meeting with other team members where a representative of United Way was making a presentation. During the meeting, Mr. Spanier received a text message on his cell phone. He sent a text message in response indicating that he was not available. His actions were reported by an administrative assistant and, therefore, he was discharged on October 11, 2005.

Mr. Spanier had been counseled in the past about his lack of listening skills and his failure to actively participate in team meetings. The employer felt he exhibited an attitude that he did not care. During his performance review in July of 2005, he was told that he was not meeting expectations regarding communications skills. On August 29, 2005, he was counseled regarding the quality of his work.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Spanier 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). In order to impose a disqualification from job insurance benefits, the evidence must establish that the final conduct that triggered the discharge constituted misconduct within the meaning of the law. In the case at hand, it was the fact that Mr. Spanier used text messaging during a meeting that caused him to be discharged. He used text messaging only to the extent of telling the calling party that he was not available. His actions were not disruptive and did not evince a willful or wanton disregard of the employer's standards. Therefore, it is concluded that there was no misconduct on Mr. Spanier's part on October 7.

Because the final incident that precipitated the discharge did not constitute misconduct within the meaning of the law, the administrative law judge is not free to consider other, past acts of misconduct. For the reasons stated herein, it is concluded 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). Benefits are allowed.

DECISION:

The representative's decision dated October 27, 2005, reference 01, is hereby affirmed. Mr. Spanier was discharged by USCC, but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kjw