

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

KRIS BEQUEAITH
524 – 185TH ST
MECHANICSVILLE IA 52306

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

Appeal Number: 05A-UI-11599-CT
OC: 10/16/05 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.(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

United States Cellular Corporation (USCC) filed an appeal from a representative's decision dated November 4, 2005, reference 01, which held that no disqualification would be imposed regarding Kris Bequeaith's separation from employment. After due notice was issued, a hearing was held by telephone on December 1, 2005. Ms. Bequeaith participated personally. The employer participated by Jennifer Robinson, Business-to-Business Coach. Exhibits One and Two were admitted on the employer's behalf.

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. Bequeaith was employed by USCC from September 11, 2000 until October 11, 2005. She was last employed full time as a business-to-business off-line team member. She was discharged as a result of comments the employer considered to be negative.

On July 28, 2005, the employer met with Ms. Bequeaith to discuss comments she had been making at work. On July 14, she sent an e-mail to Matthew Sampson, the department manager, regarding a shift change opportunity. In the e-mail, she made reference to coworkers "slacking off" on work on Fridays and leaving the work for her to do on Saturdays. Also on July 14, Ms. Bequeaith commented that a coworker had opened a work ticket and then returned it to the box because she did not want to work on it.

On July 15, Ms. Bequeaith approached her supervisor regarding a "remedy" ticket taken by another employee two days prior but had not been completed. She commented that some people should not have "remedy" tickets. Also on July 15, she approached the supervisor about a different "remedy" ticket that she felt had been completed incorrectly. She indicated that the ticket had been worked on by a number of individuals and was disorganized. After a review, it was determined that the ticket had been completed correctly. Later on July 15, Ms. Bequeaith gave her coach a copy of a fax that had been sent requesting that a user name be changed. Someone had suggested that the customer fax in the request for change. Ms. Bequeaith highlighted the area to show who had told the customer to make the request by fax. The employer believed she was pointing out that the other employee had done something wrong by requesting a fax rather than simply making the change. As she left the supervisor's area, Ms. Bequeaith commented that she was surprised that the individual had helped the customer at all since others were afraid to assist business customers.

On July 27, the supervisor was offering voluntary time off to the team. Melissa was the first person on the list to be offered the time off. Ms. Bequeaith commented that Melissa should not be on the list since she had not participated in helping get the box of work cleared because she was assigned to work on a different project. The various comments noted between July 14 and July 27 were considered negative and were discussed with Ms. Bequeaith on July 28. She was told that the employer expected her to be proactive and professional in her comments. She was told that her questions and concerns should be brought to the supervisor away from the floor and not within hearing distance of other employees. She was advised that further violations could result in discharge.

The decision to discharge Ms. Bequeaith was based on a comment she made to coworkers on October 9, 2005 regarding Melissa. Melissa, although a part of the team, was assigned to work on a "culture club" project in a different area. Ms. Bequeaith made a comment to the effect that "wouldn't it be nice to be outside working." The comment was intended as joking with her coworkers. As a result of the comment, Ms. Bequeaith was discharged on October 11, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Bequeaith 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). Ms. Bequeaith was discharged as a result of negative comments about her coworkers and their work habits. In order to sustain a disqualification from job insurance benefits, the evidence must establish a current act of misconduct in relation to the separation date. In the case at hand, Ms. Bequeaith was discharged because of the statement she made in reference to Melissa on October 9. Melissa was working in what some considered a more favorable environment than Ms. Bequeaith and the remainder of the team. Ms. Bequeaith made a joke to the effect that it must be nice to be in Melissa's job. Her statement did not evince a wanton and willful disregard for the employer's standards. The administrative law judge does not believe the comment was motivated by any malice towards Melissa. The administrative law judge concludes that the comment made on October 9 was not an act of misconduct, as that term is defined by law.

Ms. Bequeaith had made negative comments about coworkers prior to October 9. The employer did not document any other problems between the July 28, 2005 warning and the incident of October 9, 2005. The administrative law judge need not determine if the actions that brought about the July 28 warning constituted misconduct. Even if they established misconduct, the conduct from July would be too remote in time to be considered current acts in relation to the October 9 discharge date.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has failed to establish a current act of misconduct. 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 stated herein, benefits are allowed.

DECISION:

The representative's decision dated November 4, 2005, reference 01, is hereby affirmed. Ms. Bequeaith was discharged by USCC but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/tjc