

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

RICHARD K MORTON
2722 MOCKINGBIRD CT
HIAWATHA IA 52233

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

Appeal Number: 04A-UI-03261-DWT
OC 02/15/04 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 are 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- Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

United States Cellular Corporation (employer) appealed a representative's March 11, 2004 decision (reference 01) that concluded Richard K. Morton (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 13, 2004. The claimant participated in the hearing. Tim Garthwaite and Shelly Lawless appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on November 1, 2001. He worked as a full time business support specialist. His immediate supervisor was Garthwaite.

In late January 2004, the employer told the claimant he was being put on a 90-day probation because his job performance was not satisfactory. As a result of a January 30 incident when the claimant was contacting more than one account executive manager when the claimant put another account executive manager on hold, the employer gave him his final written warning. Much of the work the claimant performed in establishing phone lines for the first account executive manager required the claimant to wait while the computer system processed the various orders. When the claimant multi-tasked in an attempt to efficiently use his time and get work done, he violated the employer's policy. The employer's policy required the claimant to handle or focus on just one customer (account executive manager) at a time.

On Friday, February 13, the employer told the claimant he would be assigned to a new job as soon as someone could take over his current job duties. The employer told the claimant not to say anything to anyone until the employer replaced him. After the claimant learned about his new job, he sent an email to a major account and the account executive manager who handled this account. The email indicated the claimant had accepted other duties with the employer and would no longer be the contact person for this account. The account executive who had this account told the claimant this was the best way to handle this account because even though the account had previously been told not to contact the claimant about various concerns or questions, the account did not contact anyone but the claimant.

The claimant's email prompted the account to contact its account manager because the account assumed the employer would not provide the employer with adequate support.

On February 17, 2004, the employer discharged the claimant. The employer discharged the claimant for insubordination. The employer specifically told the claimant on February 13 that he should not discuss his new job duties with anyone. The claimant did not follow this instruction when he told an account he had already accepted new job duties.

The claimant established a claim for unemployment insurance benefits during the week of February 15, 2004. The claimant filed claims for the weeks ending February 21 through April 3, 2004. He received a total of \$1,578.00 in benefits during these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency,

unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew or should have known his job was in jeopardy when the employer placed him on a 90-day probation and then gave him a final written warning. The claimant also knew the employer specifically told him not to discuss any new job duties with anyone after the employer talked to him about this on February 13, 2004. The claimant asserted his intention of his February 13 email was too make sure an account did not call him. This account had been told not to contact him and yet the claimant continued receiving calls from the account even though other people could have addressed the questions. The claimant and two account executives thought if the claimant told the account he had new job duties, the account would stop contacting the claimant. The claimant did not, however, talk to his immediate supervisor about the email. When the claimant sent this email, he was not truthful and he disregarded his immediate supervisor's instructions about keeping his upcoming new job duties confidential. The plain and clear language of the claimant's February 13 email told others he had already accepted new job duties, that if the account directed calls to him answers to their questions would be delayed. The claimant's actions immediately after he met with his supervisor on February 13 amounts to an intentional disregard of the standard of behavior the employer had a right to expect from the claimant. The employer discharged the claimant for reasons constituting work-connected misconduct. As of February 15, 2004, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive benefits during the weeks ending February 21 through April 3, 2004. He has been overpaid \$1,578.00 in benefits.

DECISION:

The representative's March 11, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 15, 2004. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits during the weeks ending February 21 through April 3, 2004. He has been overpaid a total of \$1,578.00 in benefits he received for these weeks.

dlw/kjf