

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**TINA L WOZNY**  
Claimant

**APPEAL NO. 07A-UI-05113-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNITED STATES CELLULAR CORP**  
Employer

**OC: 04-15-07 R: 02**  
**Claimant: Respondent (2)**

Section 96.5(2)a – Discharge/Misconduct  
Section 96.3-7 - Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the May 8, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 8, 2007. The claimant did not participate. The employer did participate through Matt Campbell, Store Manager and Denis Leroy, Associative Representative. Employer's Exhibit One was received.

**ISSUE:**

Was the claimant discharged for work-related misconduct?

Has the claimant been overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a retail wireless consultant part time beginning in December, 2005 through April 20, 2007 when she was discharged.

The claimant was discharged after a coworker complained that she was showing pornographic pictures on her company cell phone on April 19, 2007. The claimant had been previously disciplined for the same behavior on March 30, 2007 when she was told to remove the pornographic images from her cell phone and to cease sharing them with her coworkers. The claimant was told that showing such images in the workplace was not acceptable. She was warned that continued showing of pornographic images could lead to her discharge. The claimant had been given a copy of the employer's policies which prohibit showing coworkers offensive or pornographic images.

When she was questioned about whether she shared the photos with coworkers or sent them from her cell phone to theirs, the claimant admitted that she had and that her conduct was inappropriate in the workplace. She was discharged for ignoring the employer's instructions.

The claimant has received unemployment benefits since filing a claim with an effective date of May 8, 2007.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

The claimant knew that sharing pornographic images with coworkers via her cell phone while in the work place was prohibited. Her actions constitute disqualifying misconduct. Benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The May 8, 2007, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,041.00.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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