

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH C BLOOM

Claimant

APPEAL NO. 09A-UI-15159-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED STATES CELLULAR CORP

Employer

OC: 09/06/09

Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

United States Cellular Corporation (USCC) filed an appeal from a representative's decision dated September 28, 2009, reference 01, which held that no disqualification would be imposed regarding Kenneth Bloom's separation from employment. After due notice was issued, a hearing was held by telephone on November 9, 2009. The employer participated by Paula Rosenbaum, Associate Relations Representative; Jyl King, Customer Service Coach; and Stacey Williams, Customer Service Manager. Mr. Bloom did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Mr. Bloom was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Bloom was employed by USCC from March 31, 2008 until September 4, 2009 as a full-time customer service representative. He was discharged as a result of repeated inappropriate treatment of customers.

On July 13, 2009, Mr. Bloom was placed on an "achievement plan" because of his treatment of customers. He was found to be combative and condescending towards customers. He was also warned about interrupting customers. He successfully completed the 30-day achievement plan. On August 31, he was verbally warned after he was overheard in a conversation with a customer who wanted to be transferred to the "help desk." He told the customer to be sure to tell the "help desk" that he had bounced a check.

On September 2, the employer listened to the recordings of two calls received by Mr. Bloom on September 1 and 2. In one of the calls, he became combative with a customer who wanted a new phone. During the call, Mr. Bloom raised his voice and interrupted the customer. He finally hung up on the customer. During the other call, he argued with the customer as to whether the bill had doubled. The employer listened to two additional calls on September 3 and found that

Mr. Bloom was continuing to be combative and condescending to customers. As a result, he was discharged on September 4, 2009.

Mr. Bloom filed a claim for job insurance benefits effective September 6, 2009. He has received a total of \$2,142.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

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). Mr. Bloom was discharged due to mistreatment of customers. He had been warned both verbally and in writing that arguing with and being condescending towards customers was contrary to the employer's standards. In spite of the warnings, he continued in the same behavior. In fact, he even hung up on a customer on September 1.

The employer had the right to expect that customers would be treated with courtesy and civility as the representative attempted to resolve their problems. Poor service has the potential of causing customers to take their business elsewhere. Mr. Bloom's repeated disregard for the employer's standards after warnings constituted substantial misconduct. For the reasons cited herein, it is concluded that disqualifying misconduct has been established and benefits are denied.

Mr. Bloom has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated September 28, 2009, reference 01, is hereby reversed. Mr. Bloom was discharged by USCC for disqualifying misconduct. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine if Mr. Bloom will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css