

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

MARLA K HOLST  
24045 – 290<sup>TH</sup> ST  
PRINCETON IA 52768

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

Appeal Number: 05A-UI-05757-DWT  
OC: 05/01/05 R: 04  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(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 May 18, 2005 decision (reference 01) that concluded Marla K. Holst (claimant) was qualified to receive unemployment insurance benefits, and the employer's account would not be charged because the claimant had been charged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 22, 2005. The claimant was called for the hearing, but she was not available. A message was left for the claimant to contact the Appeals Section if she wanted to participate in the hearing. The claimant did not call the Appeals Section again. Christine Vertegen and Jason Waldors, a store manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

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 in late January 2003. The claimant worked as a part-time retail wireless consultant. At the time of hire, the claimant received a copy of the employer code of ethics. This policy prohibited employees from accessing, viewing or processing any type of transaction on their account. Waldors became the claimant's store manager on March 16, 2005.

In early April 2005, the claimant gave the employer her resignation notice. The claimant informed the employer her last day of work would be May 21, 2005, because she had accepted other employment. On April 13, the claimant accessed her wireless phone account and requested a credit report. When the claimant contacted a representative with the employer about the meaning of a code, the representative did not believe the claimant when she identified herself as another employee. The representative contacted a manager about this incident because the representative realized this was a possible violation of the employer's ethics code.

After the employer investigated the incident and talked to the claimant more than once, the claimant finally acknowledged she had requested her own credit report. Even though there had been no previous problems, the employer discharged the claimant on April 28, 2005, for violating the employer's ethics policy.

The claimant established a claim for unemployment insurance benefits during the week of May 1, 2005. The claimant filed claims for the weeks ending May 14 and 21, 2005. The claimant received a total of \$426.00 in benefits for these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her 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 the employer did not allow employees to access their own account. When the claimant initially denied she had requested her credit report and another associate had made this request, the claimant intentionally and substantially disregarded the employer's interests by requesting her credit report and then initially denying that she had done this. The

combination of these two incidents amounts to work-connected misconduct. Therefore, as of May 1, 2005, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she 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 for the weeks ending May 14 and 21, 2005. She has been overpaid \$426.00 in benefits she received for these weeks.

**DECISION:**

The representative's May 18, 2005 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 May 1, 2005. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending May 14 and 21, 2005. The claimant has been overpaid and must repay \$426.00 in benefits she received for these weeks.

dlw/sc