

**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**

**MISHALLE L GORHAM  
1419 TIMEA ST  
KEOKUK IA 52632**

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

**Appeal Number: 04A-UI-08092-DWT  
OC: 06/27/04 R: 04  
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, 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 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

United States Cellular Corporation (employer) appealed a representative's July 16, 2004 decision (reference 01) that concluded Mishalle L. Gorham (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 August 18, 2004. The claimant participated in the hearing. Paige Hall and Greg Schepers testified 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?

#### FINDINGS OF FACT:

The claimant started working for the employer on December 16, 1997. She worked as a full-time retail wireless consultant. Joel Gavin became the claimant's supervisor on May 1, 2004. Schepers became the retail store manager in early May.

The employer's policy informs employees they cannot access, view or process any transaction on any associate, friend or family member's account. In October 2003, the claimant's former supervisor, T.W., sent an email to employees indicating employees could be discharged if they manipulated or changed their account or a friend or family member's account. The claimant does not recall receiving the email.

Prior to mid-April 2004, the claimant had a second line on her associate account. The second line was for her boyfriend. In mid-April the claimant was extremely upset with her boyfriend after she learned he had not been faithful to her. She wanted nothing to do with him and did not want to be responsible for his cell phone bill.

The claimant called the employer's associate phone number to ask how to get her boyfriend off her associate line but make it possible for him to keep his cell phone number. The claimant received information on what she needed to do. She followed the instructions given to her. The end result was that her boyfriend was treated as a new customer and retained his cell phone number as he had requested. The claimant did not hide this information from anyone and believed T.W. knew that her boyfriend was treated as a new customer who could generate revenue for her.

In June after Gavin and Schepers took over the supervisory positions, they learned about the claimant's mid-April transaction concerning her associate line and her boyfriend's phone. The employer concluded the claimant manipulated her account and by setting up her boyfriend with a new account she had violated the employer's policy. The employer discharged the claimant on June 25 for violating the employer's policy in mid-April.

#### 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. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

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).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The employer established compelling business reasons for discharging the claimant. The evidence does not establish that the claimant intentionally violated the employer's policy. The claimant called the appropriate department to find out what she needed to do to get her boyfriend off her associate account. The claimant followed the instructions given to her at the phone number associates were told to call. Additionally, the claimant did nothing to hide her actions and the employer had access to the fact her boyfriend was set up as a new account when it happened. The claimant did not commit a current act of misconduct. Even if the claimant had made this change in June, her actions do not constitute work-connected misconduct. Therefore, as of June 27, 2004, the claimant is qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's July 16, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute a current act of work-connected misconduct. As of June 27, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/tjc