

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEBRA J LEE**  
Claimant

**APPEAL NO: 06A-UI-08408-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNITED STATES CELLULAR CORP**  
Employer

**OC: 07/23/06 R: 03**  
**Claimant: Respondent (2)**

Section 96.5(2)a – Discharge  
Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer, United States Cellular Corporation (US Cellular), filed an appeal from a decision dated August 11, 2006, reference 01. The decision allowed benefits to the claimant, Debra Lee. After due notice was issued a hearing was held by telephone conference call on September 6, 2006. The claimant participated on her own behalf. The employer participated by Associate Relations Representative Angie Bailey and Customer Service Coach Jonilee Franzen.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of her unemployment benefits.

**FINDINGS OF FACT:**

Debra Lee was employed by US Cellular from February 2, 2004 until July 21, 2006. She was a full-time customer service representative taking incoming calls from account holders.

On June 24, 2006, the claimant was placed on a 60-day performance improvement plan. It noted she was to “memo” each account, that is, put notes onto the computer screen pertaining to that account regarding what the phone call had been regarding. She was also to work on her “composure” as it had been noted she would become defensive and combative with customers on occasion. The plan notified her that her job was in jeopardy if no improvement was seen because Ms. Lee had failed 14 of 31 calls in the prior three months.

On July 20, 2006, Customer Service Coach Jonilee Franzen, and two other coaches, were reviewing recordings of calls by all the CSRs. These calls were selected at random. Two calls of the claimant’s were selected. In one she had not memoed the call onto the computer, and in another she had released account information to a person who was not authorized access to the account. Ms. Franzen consulted with her manager and the decision was made to discharge the claimant. On July 21, 2006, the claimant met with Ms. Franzen and Associate Relations Representative Angie Bailey. The recordings of the calls were played for her and she

acknowledged she had not memoed the one call and had given information about an account to an unauthorized person on the second call. She was then discharged.

Debra Lee has received unemployment benefits since filing a claim with an effective date of July 23, 2006.

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

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant had been advised her job was in jeopardy as a result of her poor work performance. She had 60 days under the performance improvement plan to correct the problems but she failed to do this. On two calls in two days she did not memo the call and released private account information to an unauthorized person. This was a violation of employer policy and the performance improve plan which is conduct not in the best interests of the employer and the claimant is disqualified.

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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of August 11, 2006, reference 01, is reversed. Debra Lee is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,896.00.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs