

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

GREGORY J SCHEPERS  
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UNITED STATES CELLULAR CORP  
c/o TALX UC EXPRESS  
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ST LOUIS MO 63166-0283

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Appeal Number: 05A-UI-05683-CT  
OC: 04/24/05 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 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 for Misconduct

STATEMENT OF THE CASE:

United States Cellular Corporation (USCC) filed an appeal from a representative's decision dated May 13, 2005, reference 01, which held that no disqualification would be imposed regarding Gregory Schepers' separation from employment. After due notice was issued, a hearing was held by telephone on June 30, 2005. Mr. Schepers participated personally and was represented by James Larew, Attorney at Law. The employer participated by Dave Neuhaus, Areas Sales Manager, and Christine Verstegen, Associate Relations Manager.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Schepers was employed by USCC from March 7, 1999 until April 1, 2005. He was last employed full time as store manager, a position he had held since May 1, 2004. He was discharged based on a complaint the employer received on March 29 about conduct he engaged in on March 17.

On March 17, USCC employees were allowed to dress in costumes from the 1970's. Mr. Schepers wore his regular clothes to work and then changed while at work. Later that day, he went to the office he shared with Nancy Caviness to change back into his regular clothes. Ms. Caviness was seated at her desk with her back to Mr. Schepers when she heard him unzip his pants. She asked what he was doing and stated that she needed to get out of the room. Mr. Schepers told her to remain turned around. He was wearing sports shorts and underwear under the pants he was wearing. Ms. Caviness did not actually see him remove any clothing. As a result of this complaint, Mr. Schepers was discharged on April 1, 2005. The above matter was the sole reason for the discharge.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Schepers was separated from employment for any disqualifying reason. 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. Schepers was discharged for changing his clothing in the same office with a female employee he supervised. He was never naked as he had on shorts and underwear beneath his pants. Ms. Caviness had her back to him while he was changing and he requested that she remain turned away from him.

Mr. Schepers used poor judgment in not going to a restroom to change his clothing. He did not have a history of behaving inappropriately with female employees. Because he asked Ms. Caviness to remain turned away from him, the administrative law judge must conclude that his intent was not to titillate or harass her. Under the circumstances presented, the administrative law judge is inclined to view his behavior as an isolated instance of poor judgment and not deliberate misconduct. Conduct so characterized is exempt from the definition of disqualifying misconduct. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

#### DECISION:

The representative's decision dated May 13, 2005, reference 01, is hereby affirmed. Mr. Schepers was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/sc