

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

MELISSA K HAYES  
207 CENTER AVE  
URBANA IA 52345

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

Appeal Number: 04A-UI-08093-DWT  
OC: 06/27/04 R: 03  
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 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  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

United Cellular Corporation (employer) appealed a representative's July 15, 2004 decision (reference 01) that concluded Melissa K. Hayes (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 responded to the hearing notice and provided the phone number of (319) 210-0153. When this number was called, a recording indicated this was not the correct area code and no telephone connection could be made. The phone number the claimant reported when she established her claim for benefits was tried, but again no telephone connection was made. Angie Baily, the employer's human resource coordinator, 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 on September 9, 2002. She worked as a full-time administrative assistant. Her supervisor was Mark Smith.

The employer has cell phones in its inventory that can be checked out for business purposes. The cell phones are locked up, but the claimant had the key. The claimant knew the procedure employees had to use to obtain one of the employer's cell phones for business purposes.

The employer learned the claimant took one of the business cells and gave it to her babysitter to use on June 25. The claimant did not check out the cell phone and did not indicate in any way she had taken the employer's business cell phone. On June 30, 2004, the employer discharged the claimant for taking the employer's business cell phone for personal reasons without any authorization.

The claimant established a claim for unemployment insurance benefits during the week of June 27, 2004. She filed claims for the weeks ending July 10 through August 14, 2004. The claimant received a total of \$1,863.00 benefits for these weeks.

The claimant called the Appeals Section at 9:50 a.m. on August 18. She indicated the phone number she previously provided was correct. When the administrative law judge called the claimant's phone number again, the call again did not connect because the area code was not valid.

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 or should have known the employer's business cell phone was not for her babysitter to use to call the claimant. The claimant had the key to get the employer's business cell phones out of inventory and used her position to take a cell phone without indicating she had taken it and without anyone's authorization. The evidence indicates the claimant attempted to "hide" the fact she had taken the employer's business cell phone for her personal use. This isolated act amounts to an intentional and substantial disregard of the standard of behavior the

employer has a right to expect from an employee. The employer discharged the claimant for reasons constituting work-connected misconduct. As of June 27, 2004, 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 unemployment insurance benefits during the weeks ending July 10 through August 14, 2004. She has been overpaid a total of \$1,863.00 in unemployment insurance benefits.

**DECISION:**

The representative's July 15, 2004 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 June 27, 2004. 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 unemployment insurance benefits during the weeks ending July 10 through August 14, 2004. The claimant has been overpaid a total of \$1,863.00 in benefits she received for these weeks.

dlw/kjf