

**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**

**NANCY J STROBEL  
1458 GOLFVIEW DR NE  
CEDAR RAPIDS IA 52402**

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

**Appeal Number: 04A-UI-01170-CT  
OC: 12/28/03 R: 03  
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 January 23, 2004, reference 01, which held that no disqualification would be imposed regarding Nancy Strobel's separation from employment. After due notice was issued, a hearing was held by telephone on February 24, 2004. Ms. Strobel participated personally. The employer participated by Angie Bailey, Human Resources Coordinator, and Bobbi O'Connell, Customer Service Supervisor. The employer was represented by Kenneth Johnson of Talx UC Express.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Strobel was employed by USCC from September 11, 2000 until December 29, 2003 as a full-time customer service representative. On November 5, 2003, she was placed on a 60-day performance improvement plan because of what the employer considered negative conduct. She was discharged for violating the terms of the plan.

On October 13, Ms. Strobel was talking with two coworkers when she expressed that she was feeling "burnt out." On October 15, she made negative comments to coworkers concerning the fact that team statistics were distributed to everyone in her group. She felt the statistics should have been private to each individual associate. Because of her conduct on these two days, Ms. Strobel was placed on the performance improvement plan. On November 5, she gave a presentation to her group and received a favorable response from team members. Ms. Strobel commented that she gave the presentation because she had to and not because it was fun. The employer considered this to be negative conduct. On December 3, the employer's "help desk" gave a presentation to the group and Ms. Strobel commented under her breath that the "help desk" was useless. The employer also considered this to be negative conduct.

The decision to discharge Ms. Strobel was based on her actions of December 24. Employees were given the opportunity to leave work early that day but had to sign up during breaks in order to get on the list. Ms. Strobel signed up during her first break but her break time had been delayed because she was on the telephone at the designated start time. Because she signed up at a time later than her normal break time, the supervisor believed she had signed up at an inappropriate time. Therefore, the supervisor sent her an e-mail telling her she had to sign up again. Ms. Strobel sent an e-mail advising as to why she signed up late. When she had not received any response to her e-mail, she went to Heather Sneed's desk and approached her on the issue, while Ms. Sneed was meeting with another employee. She told Ms. Sneed that she did not appreciate being bumped from the list without someone asking why she signed up late. Ms. Strobel's conduct was considered to be in violation of the standards set forth in the performance improvement plan and, therefore, she was discharged on December 29, 2003.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Strobel 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 in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). For reasons which follow, the administrative law judge concludes that the employer has failed to establish disqualifying misconduct. In order for a disqualification to be imposed, the misconduct must be substantial. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). It is not reasonable to expect employees to be docile and well mannered at all times.

Ms. Strobel's comments on October 13 and October 15 did not evince a willful or wanton disregard for the employer's standards. On October 13, she was expressing frustration and told two coworkers that she was "burnt out." On October 15, she was merely expressing dissatisfaction with the employer's distribution of statistics she believed should have been kept private. While her comments may have been negative, they were not so outrageous as to constitute misconduct. The employer failed to establish that Ms. Strobel acted inappropriately in approaching the supervisor on December 24. She had a complaint and the supervisor was

the appropriate person to talk with about it. There was no competent evidence that she was rude or belligerent when speaking with the supervisor on that date.

Although the employer's evidence establishes that Ms. Strobel may have been an unsatisfactory employee, it does not establish conduct which rises to the level 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 January 23, 2004, reference 01, is hereby affirmed. Ms. Strobel was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjf