

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

KENNETH W CHRISTLIEB  
1320 MEADOWVIEW LN  
DAVENPORT IA 52806-1888

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

Appeal Number: 06A-UI-07716-HT  
OC: 06/25/06 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

STATEMENT OF THE CASE:

The employer, United States Cellular Corporation (US Cellular), filed an appeal from a decision dated July 19, 2006, reference 01. The decision allowed benefits to the claimant, Kenneth Christlieb. After due notice was issued a hearing was held by telephone conference call on August 28, 2006. The claimant participated on his own behalf. The employer participated by Area Manager Ron Schmudlach and Associates Relations Representative Dennis Leroy

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Kenneth Christlieb was employed by US Cellular

from August 1, 2001 until June 21, 2006. He was a full-time district sales manager. He and his team served business customers and retail stores were to serve private customers.

Mr. Christlieb had been given a written warning in November 2004, about not properly serving business customers because his Davenport, Iowa, based team wrote a contract for a business customer with offices in Des Moines, Iowa, and Omaha, Nebraska, which meant his team was not in the locality to serve the business customer. The claimant disputed the warning because he had been told the business customer had offices throughout the state, and the sale had originated with one of his team members mentoring a sales representative in Omaha, Nebraska.

The employer was concerned to divide the responsibilities between the business and private customers. This was intended to serve the customers better and to increase the employer's customer satisfaction. This had been emphasized at various business meetings and discussions between Area Manager Ron Schmudlach and Mr. Christlieb.

On June 14, 2006, the claimant received an inquiry/complaint from a sales representative from the Moline, Illinois, store. He was upset because a customer had come in to have his phone activated. The phone had been sold to him by Mr. Christlieb's team through one of its business accounts because this customer worked at that business. The sales representative was unhappy he had to service the private customer and not receive any of the commission. The response from the claimant said that private customers should and would be directed to the retail sales but that situations such as this was a "gray area."

The e-mail was copied to Retail Sales Manager Chad Suttle who forwarded it to the business sales division. Mr. Schmudlach received it on June 16, 2006, and took it to be a defiance of the company's policy not to have business customers served by retail stores and not to have private customers served by the business sales team. He did not investigate or inquire of Mr. Christlieb what the circumstances were which prompted the e-mail but consulted with the human resources personnel and discharged the claimant on June 21, 2006.

#### REASONING AND CONCLUSIONS OF LAW:

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

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 employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The employer's position was that the e-mail sent to the retail sales associate showed the claimant was making decisions contrary to the best interests of the employer and its customers. However, the employer never investigated the situation but interpreted the e-mail as defiance on the claimant's part after being advised of the company's position. If the employer had inquired more fully into the situation it might have been able to rebut the claimant's explanation. As it did not, no evidence contrary to the claimant's denial of wrong doing has been presented. The employer has failed to meet its burden of proof and disqualification may not be imposed.

#### DECISION:

The representative's decision of July 19, 2006, reference 01, is affirmed. Kenneth Christlieb is qualified for benefits, provided he is otherwise eligible.

bgh/pjs