

**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**

**JERRY D STEWART  
100 – 1<sup>ST</sup> AVE NE APT 100  
CEDAR RAPIDS IA 52402**

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

**Appeal Number: 05A-UI-00828-JTT  
OC: 12/19/04 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, 4th 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(1) – Voluntary Quit  
Section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

United States Cellular filed a timely appeal from the January 13, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 9, 2005. Jerry Stewart participated in the hearing. United States Cellular participated through Mike Adam, Store Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jerry Stewart was employed by United States Cellular as a part-time retail wireless customer service representative until December 23, 2004 when he voluntarily quit the employment.

Mr. Stewart's resignation on December 23 was prompted by the information he received on that day that he was under investigation for violating the employer's sexual harassment policy and that other employees had provided statements regarding his alleged inappropriate conduct. Mr. Stewart received the information during a discussion with Store Manager Mike Adam. During the discussion, Mr. Adam asked Mr. Stewart if there was anything he wanted to bring to the manager's attention. Mr. Stewart indicated there was not. Mr. Stewart asked how serious the investigation was and Mr. Adam indicated it was very serious. Mr. Stewart asked whether he was going to be terminated and Mr. Adam advised that the employer was only conducting an investigation at that point. The employer was in fact moving toward terminating Mr. Stewart. Mr. Stewart asked if he could resign and Mr. Adam advised that was his choice. At the time, Mr. Stewart was aware that he had previously received a final written warning for a violation of the employer's sexual harassment policy on October 1, 2004, for making an inappropriate comment to a female employee. The ongoing investigation pertained to another comment Mr. Stewart had made. Mr. Stewart tendered his resignation, but a few days later reconsidered and asked for his job back. Mr. Stewart quit rather than be discharged. The employer refused to re-employ him.

Mr. Stewart established a claim for benefits that was effective December 19, 2004. Mr. Stewart received benefits for the benefit weeks that ended December 25, 2004 through February 5, 2005 in the total amount of \$2,369.00.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Stewart's voluntary quit was for good cause attributable to the employer. It does not.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

The evidence in the record establishes that Mr. Stewart was not compelled to resign his position or be discharged. Instead, Mr. Stewart merely learned that he was under investigation. Mr. Stewart saw the proverbial writing on the wall, and decided to resign rather than wait for the investigation to conclude. Based on the evidence in the record and the applicable law, the administrative law judge concludes that Mr. Stewart's quit was without good cause attributable to the employer. Accordingly, a disqualification will enter.

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.

Having concluded that Mr. Stewart is disqualified for benefits, the administrative law judge further concludes that the benefits previously paid to Mr. Stewart represent an overpayment. Based on the evidence in the record and the application of the appropriate law, the administrative law judge concludes that Mr. Stewart has been overpaid benefits in the amount of \$2,369.00. Mr. Stewart must repay this amount.

DECISION:

The Agency representative's January 13, 2005, reference 01, decision is reversed. The claimant voluntarily left his employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in a been paid wages for insured work equal to ten times his weekly benefit allowance.

The claimant is overpaid benefits in the amount of \$2,369.00.

jt/sc