

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

ROBERT A BROWN
5021 TAMARA LN
DES MOINES IA 50265

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

Appeal Number: 05A-UI-01207-HT
OC: 12/26/04 R: 02
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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, United States Cellular Corporation (U.S. Cellular), filed an appeal from a decision dated January 19, 2005, reference 01. The decision allowed benefits to the claimant, Robert Brown. After due notice was issued a hearing was held by telephone conference call on February 18, 2005. The claimant participated on his own behalf. The employer participated by Network Operations Manager Curtis Graham.

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: Robert Brown was employed by U.S. Cellular from May 17, 2001 until December 1, 2004. He was a full-time senior switch engineer. At the time of hire, and again in 2003, the claimant received copies of the employee handbook. Among the policies contained in the handbook is notification that employees are not allowed to smoke except in designated areas outside the buildings, or consume or possess alcohol. The policy further states that any employee violating these policies is subject to disciplinary action up to and including discharge.

On November 24, 2004, Network Operations Manager Curtis Graham received a report from another associate that the claimant had beer in a refrigerator on the premises. This was the day before the Thanksgiving holiday and it took Mr. Graham until November 29 or 30, 2004, to interview other witnesses. At least three other associates confirmed the presence of the beer in the refrigerator, and there were also reports that the claimant had been smoking in the company buildings on other occasions.

Mr. Graham consulted with the human resources department regarding the proper course of action, and it was determined that discharge was the appropriate disciplinary action because of U.S. Cellular's zero-tolerance policy. Before discharging the claimant it was necessary to make sure the network was secure so he could not gain access after he was removed from employment.

The manager met with Mr. Brown on December 1, 2004 at which time he was told he was being discharged and why. He acknowledged he had put the beer in the refrigerator but had not consumed any of it, and that he had also smoked within the buildings, although he was aware of the company policies which prohibits both activities.

Robert Brown has received unemployment benefits since filing a claim with an effective date of December 26, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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 claimant was fully aware of the company policies regarding not only smoking but the possession of alcohol. It does not matter whether Mr. Brown drank any of the beer, he brought it onto company premises where he left it in a refrigerator. The policy prohibits the possession of alcohol, not merely its consumption or being under its influence. In addition, he had on more than one occasion violated the no-smoking policy although he knew he was not allowed to smoke within the buildings. These constitute willful and deliberate violations of company policy and as such is conduct not in the best interests of the employer. The claimant is disqualified.

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.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of January 19, 2005, reference 01, is reversed. Robert Brown is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$2,286.00.

bgh/tjc