

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**CARL R HAYNES**  
Claimant

**APPEAL NO. 09A-UI-10681-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ANNETT HOLDINGS INC**  
Employer

**OC: 06/07/09**  
**Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Annett Holdings, filed an appeal from a decision dated July 16, 2009, reference 01. The decision allowed benefits to the claimant, Carl Haynes. After due notice was issued, a hearing was held by telephone conference call on August 11, 2009. The claimant participated on his own behalf. The employer participated by Road Repair Manager Ryan Blackman and was represented by TALX in the person of Bill Stasek.

**ISSUE:**

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

**FINDINGS OF FACT:**

Carl Haynes was employed by Annett Holdings from November 26, 2005 until May 29, 2009 as a full-time road repair coordinator. At the time of hire he received a copy of the employee handbook which contains the internet usage policy. The policy prohibits the use of company internet and equipment for non-business purposes. Disciplinary action up to and including discharge may occur for violation of this policy.

On May 26, 2009, the claimant contacted the IT department because his computer had acquired a virus. The IT department discovered the claimant had been accessing a number of non-work-related websites such as e-Bay, Twitter, sports networks, his personal banking, job postings and social networking.

This information was given to Road Repair Manager Ryan Blackman who reviewed it with his supervisor. The printout of unauthorized websites for the month of April 2009 is 50 pages long with 50 to 75 lines per page. He was discharged by Mr. Blackman on May 29, 2009. When confronted with the print-out of the websites he admitted he had been accessing these websites.

The claimant stated he had been given permission from his supervisor to use the company internet on breaks and lunches. The lunch period was 60 minutes and he had two 15-minute

breaks. He did use lunch and break times to go outside and smoke and the amount of time spent on the non-work-related websites amounted to more time than 90 minutes per day.

Carl Haynes has received unemployment benefits since filing a claim with an effective date of June 7, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

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.

The claimant was aware of the internet policy and knew the disciplinary action could include discharge. He may very well have had permission from his supervisor to use the internet on breaks and lunch periods but he spent considerably more time on these websites than 90 minutes on some days. This is a violation of a known company rule and is conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of July 16, 2009, reference 01, is reversed. Carl Haynes is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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