

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DIANNA WIESE**  
Claimant

**APPEAL NO. 07A-UI-06107-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COMMUNITY ACTION OF EASTERN IOWA**  
Employer

**OC: 05/20/07 R: 04  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

Community Action of Eastern Iowa (employer) appealed a representative's June 11, 2007 decision (reference 01) that concluded Dianna Wiese (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 5, 2007. The claimant participated personally. The employer participated by Roger Pavey, Executive Director. The employer offered one exhibit, which was marked for identification as Exhibit One. Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was suspended for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on October 26, 1992, as a full-time program secretary. The claimant signed for receipt of the company ethics policy on October 4, 2006. The policy prohibits employees from divulging confidential information. The employer was involved in a legal proceeding with a former employee. The claimant last saw the former employee in the fall and winter of 2006. From time to time the former employee e-mailed the claimant pictures at work or telephoned the claimant to ask for referrals.

Stephanie Medearis, the claimant's co-worker, accidentally opened a letter from an attorney regarding the former employee's legal proceeding. The former co-worker e-mailed Ms. Medearis asking her if she received papers in the mail. Ms. Medearis disclosed to the former co-worker she received legal papers.

On or about May 15, 2007, the employer discovered the e-mail. The employer thought the claimant had alerted the former co-worker about the papers. The employer questioned the claimant at 11:00 a.m. on May 22, 2007. The claimant was confused by the questioning and stated she may have talked to the former co-worker about papers. The employer suspended

the claimant without pay for the rest of May 22, 2007, and all day May 23, and 24, 2007. Later the claimant understood the employer's questions and attempted to clarify the situation. The employer did not change the claimant's status.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not suspended for misconduct.

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, b 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.

b. Any individual who has been discharged or suspended for misconduct connected with work is disqualified for benefits until the individual has worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer suspended the claimant and has the burden of proof to show misconduct. The employer did not provide any evidence of misconduct at the hearing. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's June 11, 2007 decision (reference 01) is affirmed. The claimant was suspended. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw