

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MATTHEW SUMMERS**

Claimant

**APPEAL NO. 09A-UI-06214-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VAN DIEST SUPPLY COMPANY**

Employer

**Original Claim: 03/15/09**

**Claimant: Respondent (2/R)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Van Diest Supply Company (employer) appealed a representative's April 10, 2009 decision (reference 01) that concluded Matthew J. Summers (claimant) was qualified to receive unemployment insurance benefits after a separation from employment from. After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on May 7, 2009. The claimant participated in the hearing. Carolyn Cross appeared on the employer's behalf and presented testimony from two witnesses, Kevin Spencer and Lee Trask. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on November 28, 1986. He worked full time as production team leader at the employer's agricultural chemical formulation plant. His last day of work was March 6, 2009. The employer discharged him on that date. The stated reason for the discharge was playing a computer game on the employer's computer during work time.

The employer's policies allow the use of the employer's computers for business use only. Games are specifically not permitted. The claimant indicated he was not specifically aware of the policies. However, he at least suspected that playing the games was not permitted, as on several occasions the claimant covered the surveillance cameras that covered the work area so that the cameras would not record his playing of the game, most recently on March 4. When the employer confronted the claimant on March 6, he initially denied that he had been playing the game. He then admitted that he had been playing the game for a few minutes while he was waiting for another process to run on the computer, and admitted that he had covered the surveillance camera so that it would not record his actions.

Since the claimant was a team leader and was in a position of authority in which he was expected to enforce the employer's policies as to lower level employees, the employer determined to discharge the claimant.

The claimant established a claim for unemployment insurance benefits effective March 15, 2009. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$3,000.00.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's playing of the computer game, and particularly his attempt to conceal it by covering the surveillance camera, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. White v. EAB, 448 N.W.2d 691 (Iowa 1989). The employer discharged the claimant for reasons amounting to work-connected misconduct.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded the Claims Section.

**DECISION:**

The representative's April 10, 2009 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of March 6, 2009. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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