

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HYNISSAH M FLEMING

Claimant

APPEAL NO. 08A-UI-01119-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LUTHERAN SERVICES IN IOWA INC

Employer

**OC: 01/06/08 R: 02
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Hynissah M. Fleming (claimant) appealed a representative's January 24, 2008 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Lutheran Services in Iowa, Inc. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on February 18, 2008. The claimant participated in the hearing. Diana Hanner appeared on the employer's behalf and presented testimony from one witness, Andi Bacon. 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 or about March 28, 2006. She worked full time as a home health aide at the employer's client's assisted living facility. Her last day of work was January 4, 2008. The employer discharged her on that date. The stated reason for the discharge was disobeying prior instructions regarding office access and computer usage.

On January 19, 2007, the claimant had been given a written warning prohibiting her from further access or usage of a tenant computer room and the client's dietary manager's office and computer. On November 21, 2007, she was verbally reminded of that warning and that the computers were the client's computers, not the employer's. On December 28 and December 30, 2007 and January 1, 2008, the claimant accessed the client's dietary manager's office and used the computer for at least the purpose of sending emails to Ms. Bacon, the nursing coordinator.

Ms. Bacon was informed on January 2 that the emails had been sent using the computer in the client's dietary manager's office; she then pulled video surveillance to verify that in fact the claimant had accessed the locked office on the dates the emails were sent. The claimant did not work on January 2 or January 3. On January 4, before Ms. Bacon addressed the weekend

and holiday office and computer access and use with the claimant, another employee reported that at about noon that day the claimant had been on a computer in the tenant's computer room.

When Ms. Bacon confronted the claimant later that afternoon, the claimant initially denied accessing or using the computer in either room. When Ms. Bacon responded that she had video surveillance showing the claimant's access to the dietary manager's office, the claimant admitted she had done so, arguing that since she did not have email at home it was the only way she could communicate via email with Ms. Bacon. However, email was not the only manner in which the claimant could communicate with Ms. Bacon.

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.

Iowa Code § 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 focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer’s interest, or
 2. The employee’s duties and obligations to the employer.

Henry, supra.

The claimant's access and use of the client’s dietary manager’s office and computer after previously been warned this was prohibited 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. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's January 24, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of January 4, 2008. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw