

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**THOMAS BURCHERS**  
Claimant

**APPEAL NO: 07A-UI-00473-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PINDARSET INC**  
Employer

**OC: 12/10/06 R: 03  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Thomas Burchers (claimant) appealed an unemployment insurance decision dated January 4, 2007, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Pindarset, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 30, 2007. The claimant participated in the hearing with former supervisor Scheryl McColley. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted, and therefore, did not participate. 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:**

The issue is whether the employer discharged the claimant for work-related misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time compliance specialist from June 26, 2005 through November 20, 2006 when he was terminated. He was discharged for inappropriately using the Internet while on company time, sharing confidential company secrets and falsifying time records. The claimant had an Internet journal or blog on which he vented about his job with the employer and his thoughts were available to the public. In the claimant's blog, he admittedly identified the employer for whom he works and discussed other employees and situations at work. The employer became aware of the claimant's blogging and discovered he was blogging during work hours. The blogs have a date and time stamp placed on them when they are submitted. The employer had a detailed list of 18 blog entries made by the claimant during a time he was working and on which his discharge was based.

## REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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 section 96.5-2-a.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for writing in a public journal on the Internet about work and during work hours. The claimant admitted he identified the employer and talked about co-employees and work situations in his blogs. While he denies blogging at work, he does acknowledge the employer had a list of 18 of his blog entries that appear to have been written when he was at work. Although the claimant may have been an exceptional employee, his repeated blogging about work during work hours was not an isolated incident. Although the employer did not participate, the claimant presented sufficient evidence on his own to establish misconduct and warrant a denial of benefits.

**DECISION:**

The unemployment insurance decision dated January 4, 2007, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs