

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on October 16, 2000. The claimant worked as a full-time administrative clerk. The claimant received a copy of the employer's Electronic Communications policy that informed employees they were not allowed to transmit offensive images or messages of a sexual nature. (Employer's Exhibit One.) The claimant also received a copy of the employer's harassment policy that gave employees examples of behavior the employer did not tolerate. (Employer's Exhibit Three.)

Prior to August 26, 2005, the claimant's job was not in jeopardy. On August 26, a supervisor observed the claimant on an extended phone call that appeared to be personal instead of business related. On September 4, 2005, the employer received an anonymous letter that reported the claimant made numerous personal phone calls, sent and received numerous emails that were sexually oriented, accessed a pornographic website at work, and received personal mail at work that was inappropriate. The writer indicated the claimant's actions made the writer uncomfortable. On September 8, an employee reported the claimant engaged in an excessive number of personal phone calls that were inappropriate in the work place and that the claimant was involved in an interoffice affair.

Based on the above complaints, the employer talked to the claimant on September 9, 2005. During this discussion, the claimant admitted she was involved in a personal relationship with another employee, that she had many personal phone calls at work because she received calls from him and admitted she had received and sent inappropriate emails. The claimant denied she had accessed a pornographic website. The claimant surmised a co-worker had noticed a Victoria Secret webpage the claimant had accessed when she made online purchases. The employer placed the claimant on a paid administrative leave on September 9, 2005. The employer wanted an opportunity to investigate this situation.

The employer's investigation revealed the claimant had an extensive number of personal calls that were anywhere from 10 to 37 minutes long. The employer also discovered that many emails the claimant received and sent were sexual in nature and violated the employer's policy. Employees reported feeling uncomfortable at work because during her personal phone calls the claimant was very vocal and many of her conversations were sexually oriented.

After the employer learned the subject matter of many of the claimant's emails, the employer discharged the claimant for violating the employer's Electronic Communications policy. The employer discharged the claimant on September 28, 2005.

The claimant established a claim for unemployment insurance benefits during the week of September 25, 2005. The claimant filed claims for the weeks ending October 8 and 15, 2005. She received her maximum weekly benefit amount of \$338.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew or should have known the employer did not allow employees to send inappropriate images or comments by email on the employer's equipment. The claimant knew or should have known that when she talked on the phone, co-workers could overhear her sexually implicit phone conversations. The evidence establishes the claimant intentionally and substantially disregarded the standard of behavior the employer had a right to expect from an employee. The claimant committed work-connected misconduct. As of September 25, 2005, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending October 8 and 15, 2005. The claimant has been overpaid \$676.00 in benefits she received for these weeks.

DECISION:

The representative's October 13, 2005 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of September 25, 2005. This disqualification continues until she 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. The claimant is not legally entitled to receive benefits for the weeks ending October 8 and 15, 2005. The claimant has been overpaid and must repay a total of \$676.00 in benefits she received for these weeks.

dlw/s