

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CATHYRN RACHUY
Claimant

APPEAL NO: 09A-UI-06562-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WILLIAM PENN UNIVERSITY
Employer

OC: 03/22/09

Claimant: Appellant (5)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Cathryn Rachuy (claimant) appealed a representative's April 16, 2009 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with William Penn University (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 26, 2009. The claimant participated in the hearing. Louis Blaine appeared on the employer's behalf and presented testimony from two other witnesses, Dr. Lee Bash and Ean Grave. During the hearing, Employer's Exhibit One was entered into evidence. 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 there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

After a prior period of employment with the employer through a temporary employment firm, the claimant started working directly for the employer on June 11, 2007. She worked full time as a curriculum and faculty support person / book distribution and classroom assignment manager at the employer's West Des Moines college for working adults. Her last day of work was March 24, 2009. The employer informed her on that date that it intended to discharge her. The claimant then requested and was allowed to resign in lieu of discharge. The reason the employer had determined to discharge the claimant was misuse of the employer's computer to access a sexually explicit website.

Approximately the week before March 24 Dr. Bash, the dean of the college, had directed Mr. Grave, the information technology supervisor, to run a check of staff computer usage to determine if there were any problems. The report indicated the claimant had a high volume of questionable internet accesses. Dr. Bash then directed Mr. Grave on about March 23 to do a more detailed report on the claimant usage.

That report was completed on March 24 and indicated that over the past two weeks there were over 140 accesses of the sexually explicit website. As a result, the employer confronted the claimant. She did not deny the allegations, and was told she was being discharged. She subsequently sent an email to Dr. Bash in which she apologized for "making such a bad decision" and stated that she understood that "it is unacceptable and unprofessional to visit those types of websites especially at work." She then sought to be given some other level of discipline, and when that failed, requested and was permitted to resign in lieu of discharge.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a

871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did not have the intent to sever the employment relationship necessary to treat the separation as a "voluntary quit" for unemployment insurance purposes; she did not have the option to continue her employment; she could either quit or be discharged. 871 IAC 24.26(21). As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance.

The next issue in this case is then whether the employer effectively discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). 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).

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 which 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 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. 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 access of the sexually explicit website using the employer's computer 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 effectively discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's April 16, 2009 decision (reference 01) is modified with no effect on the parties. The claimant did not voluntarily quit but the employer effectively discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of March 22, 2009. 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/pjs