IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

Appeal Number: 04A-UI-01963-DWT
OC 01/18/04 R 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Soy Basics LLC (employer) appealed a representative's February 13, 2004 decision (reference 01) that concluded Allison R. Hemann (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 7 and 29, 2004. The claimant participated in the hearing with her attorney, Kevin Schoeberl. Jon Nicolaisen, the president, and Ron Fish, the controller, appeared on the employer's behalf. 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:

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

FINDINGS OF FACT:

The claimant started working for the employer on April 22, 2001. She worked full time in the accounting department. Fish was her supervisor.

Initially, the employer required the claimant to mail out daily customer statements. In addition to her other duties and the time it took to get out statements, the employer agreed in the fall of 2003 the claimant could send out billing statements every Friday. On December 19, 2003, the employer gave the claimant a performance evaluation and told her she was being placed on a 90-day probation because her work performance was not satisfactory. The primary problem was the claimant's inability to stay on task. Fish indicated he would set up a plan and give her guidelines to improve her work performance.

During the week of January 5, 2004, Fish asked the claimant to do work she did not usually do to close out the year. During this week, the claimant calculated commissions for the employer's sales people. As a result of the extra job duties Fish asked her to do, the claimant was unable to mail out customer statements on Friday, January 9, 2004. Fish knew about this and told the claimant she had to get the statements out the next week. The claimant got all of the customer statements out by Saturday, January 17, because she took some time off on January 16. To get statements out, the claimant spent time making photocopies and double checking accounts to make sure she did not send out statements that customers had already paid. While she was preparing statements some employees may have thought she was wasting time. Fish did not say anything to the claimant when she was preparing the statements even though he had been monitoring her work since December 19.

Between December 19 and January 19, Fish monitored the claimant's work and did not see any major problems with her work performance. On January 19, Nicolaisen's partner complained about how unproductive the claimant appeared to be and she had not mailed any statements out the week of January 9, 2004. The employer decided to look at her computer to see if she was spending too much time on her computer concerning personal matters during work hours.

The employer discovered the claimant sent over 120 emails to various people between July 2003 and January 19, 2004. The employer also learned the claimant sent the emails to both employees and people who were not employees. Some of the emails related to personal matters and some expressed problems and frustrations with a situation at work. The claimant felt the work atmosphere was extremely tense when the employer did not explain why one employee suddenly stopped working for the employer. One of the emails the claimant sent to her sister contained some unflattering remarks about the wife of a partner.

The employer's rules inform employees they are not permitted to use the employer's equipment for personal reasons. While the employer considers using the employer's computer and Internet service to send an email to a person who is not an employee as a violation of the employer's rules, employees receive and send emails on the employer's computer on a regular basis. The claimant understood she could use the employer's computer to send a personal email at work as long as she did it on a break and did not use the employer's Internet service excessively.

After the employer discovered the number of emails the claimant had sent and received during the seven-month period and the subject matter of some of the emails, the employer concluded the claimant used the employer's equipment and internet service so much it adversely affected her job performance. The employer discharged her on January 20, 2004. The employer told

the claimant she was discharged because she sent confidential information to a person who did not work for the employer, the claimant's sister. The employer also discharged the claimant because she was unable to get her work done in a timely and satisfactory manner.

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. 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

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).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

After the employer learned about the subject matter of some of the claimant's emails, the employer had business reasons for discharging the claimant. The facts, however, indicate there were personnel problems in the office during the fall of 2003, which affected not only the individuals personally involved but also the employees who worked for the employer, such as the claimant. During this period of frustration, the claimant used poor judgment when she made a derogatory remark about the spouse of a partner to her sister. Her email comment did not, however, disclose any confidential information. While the claimant's remark was inappropriate, she was frustrated and vented to someone she trusted.

The facts indicate the employer has not been completely satisfied with the claimant's work performance for a while. On December 19, 2003, the claimant should have realized her job was in jeopardy if her work performance did not improve. On December 19, the employer told the claimant she would be given an improvement plan to help her improve her performance. This was not done as of January 20 because year-end work had to be completed. As a result, the employer did not have time to give any guidelines to the claimant. Also, the employer gave the claimant additional job duties so she was unable to mail out customer statements on January 9 but met her supervisor's deadline to do the following week.

The employer's policy informs employees they cannot use the employer's equipment for personal use. The evidence, however, indicates the employer does not strictly enforce this policy. Since the claimant knew her co-workers received and sent personal emails at work and were not disciplined, the claimant understood the employer allowed employees to send emails

at work as long as they were on break and did not send an excessive number of emails. While the employer has the right to consider over a 100 emails as excessive during a seven-month period, this is only about one email a day if you consider there are 20 workdays per month.

The facts do not establish the claimant intentionally and substantially disregarded the employer's interests when she sent emails from work between July 2003 and January 19, 2004. While the claimant made some mistakes, she worked to the best of her ability. The claimant did not commit a current act of work-connected misconduct. Therefore, as of January 18, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's February 13, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute a current act of work-connected misconduct. As of January 18, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf