

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MATTHEW M HORN**  
Claimant

**APPEAL NO. 09A-UI-04714-C**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PINNACLE FOODS GROUP**  
Employer

**OC: 02/22/09**  
**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Matthew Horn filed an appeal from a representative's decision dated March 20, 2009, reference 01, which denied benefits on a finding that he had been suspended by Pinnacle Foods Group for misconduct. After due notice was issued, a hearing was held on March 31, 2009 in Burlington, Iowa. Mr. Horn participated personally and was represented by Irving King, Attorney at Law. Exhibit A was admitted on Mr. Horn's behalf. The employer participated by Ron Udell, Senior Human Resources Manager, and was represented by Gina Moshiri and John Marino, Attorneys at Law. Exhibits One, Two, Three, Five and Six admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Mr. Horn was suspended from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Horn began working for Pinnacle on October 6, 2003 and worked full time as a production technician. He was suspended for five days beginning January 21, 2009 based on an allegation that he violated the employer's computer system policy. Prior to his suspension, Mr. Horn was not provided a copy of the employer's nine-page "Information and Computer Systems Policy" (Exhibit One). He did, however, acknowledge understanding of the one-page "Information and Computer Systems Policy" (Exhibit Two), which set forth five terms for use of the system.

The "Information and Computer Systems Policy" signed by Mr. Horn provides that all components of the computer system are the property of Pinnacle and that the system is to be used solely for work-related purposes. The document further provides that users of the system have no expectation of privacy in connection with the use of the system. Finally, it provides that violations of the computer usage policy will be subject to disciplinary action. Mr. Horn also received a copy of the employer's plant rules. Plant rule Number 2 prohibits theft of property belonging to either the company or another employee. Rule Number 8 prohibits the misuse or

damage to property belonging to the company or another employee. Plant rule Number 15 prohibits reading material other than that which pertains to the individual's job while in the operations areas.

In November of 2008, Pinnacle learned that several employees had accessed files containing bonus and salary information for several management persons. The information had been inadvertently placed on an unsecured drive by the plant manager. Mr. Horn's job allowed him access to the computer system. There were rumors in the plant that the information was available on the computer. Mr. Horn accessed the files and looked at the material contained in the files. He did not copy, print, or download the material. He did not tell anyone else how to access the information. He did not share the information with anyone else.

The employer met with Mr. Horn on November 19 and he acknowledged that he had accessed and read the files. He continued to work at his normal job until his disciplinary suspension on January 21, 2009. During the interim, Pinnacle's information technology (IT) department investigated to determine which employees had accessed the files and when and whether the files had been downloaded. The IT report did not disclose anything different about Mr. Horn's conduct that he had not already acknowledged during his November 19 interview.

After the investigation, the employer decided that those individuals who only accessed and viewed the subject files would receive a written warning. Those who had viewed and shared the information were suspended. Those individuals who had downloaded the information to either another computer or a hardware device or who had printed the information were discharged. Because he had only accessed and viewed the information, Mr. Horn was only suspended. The above matter was the sole reason for the suspension.

#### **REASONING AND CONCLUSIONS OF LAW:**

Mr. Horn was suspended from work for five days. When an individual is unemployed due to a disciplinary suspension imposed by the employer, the individual is considered discharged and the issue of misconduct must be resolved. 871 IAC 24.32(9). An individual who was discharged is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer's burden included establishing that the discharge was predicated on a current act of misconduct. 871 IAC 24.32(8).

In the case at hand, the employer was fully aware of Mr. Horn's conduct on November 19, 2008. He acknowledged engaging in the conduct which gave rise to his suspension. However, he was not suspended pending a further review. The employer waited over two months before suspending him. The employer's delay precludes considering the November 19 acknowledgement as a current act in relation to the January 21 suspension.

Even if the administrative law judge were to conclude that the employer's delay was justified, disqualifying misconduct would still not be established. Mr. Horn did not "hack" the employer's computer system to obtain information he was not entitled to have. The plant manager made the information available by leaving it on a "common" drive where other employees could access it. It was tantamount to leaving a confidential file on the break room table. There is no doubt that Mr. Horn had no work-related reason to have the information. At most, he used poor judgment in accessing the files. However, the definition of "misconduct" specifically excludes that conduct that can be characterized as an isolated instance of poor judgment. 871 IAC 24.32(1).

It was well within the employer's prerogative to suspend Mr. Horn. However, conduct that might warrant a discharge or suspension from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Inasmuch as Mr. Horn's conduct did not evince a willful or wanton disregard of the employer's standards as found in either Exhibit Two or Exhibit Three, it is concluded that substantial misconduct has not been established. Accordingly, benefits are allowed.

**DECISION:**

The representative's decision dated March 20, 2009, reference 01, is hereby reversed. Mr. Horn was suspended by Pinnacle but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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