

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MATTHEW E FARRELL
Claimant

APPEAL NO: 18A-UI-10994-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOSEPH L ERTL INC
Employer

OC: 10/14/18
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 29, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 27, 2018. The claimant participated in the hearing with former supervisor/lead person Ken McCusker. Rebecca Rawson, Human Resources Manager, participated in the hearing on behalf of the employer. Employer's Exhibits B through G were admitted into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time supervisor for Joseph L. Ertl Inc from September 1, 2011 to October 10, 2018. He was discharged for inappropriate use of the employer's computers and failure to perform his job duties.

On May 2, 2018, at 9:39 a.m. the employer issued a companywide warning via email stating the computers were for company use only (Employer's Exhibit C). The email reminded employees that computers, etc. are provided to employees who need to use them as part of their job and they are provided for the express purpose of conducting business and corresponding with customers for business purposes (Employer's Exhibit G). "As such, employees should demonstrate proper business etiquette with all related correspondence" (Employer's Exhibit C). The email stated the equipment may be monitored or viewed at any time without notice (Employer's Exhibit C).

The employer was having difficulty with production at the Farley plant so it placed the claimant there as an overnight supervisor. When production did not improve it began an investigation and as part of the investigation, pulled the claimant's internet usage for the one and one-half weeks he had been working as an overnight supervisor. During the claimant's

October 8/October 9, 2018, shift alone it recorded 15 pages of internet activity unrelated to work. He was on Facebook, Google, a radio station, Cedar Rapids news sites, "Movies that were too sad to finish: A real life story that will leave you reeling; Movies that were too disturbing to finish; What the 1995 Dallas Cowboys look like now: the luckiest coach on earth; What the '85 Bears look like now; Reasons you shouldn't kill spiders in your house; These are the biggest spiders in the world; Mortal Kombat: Ranking All the Characters; Hundreds of fans turn out to Chris Cornell statue unveiling; RIP: A Celebration of Matt Krawszuk's Life; Why 1968 was an epic year for sports; People who publicly dissed Rachel Ray; Things you didn't know about Rachel Ray; Deleted movie endings better than the original; the untold truth of Queen; The untold truth of Led Zeppelin; Messed up things from the Vietnam War; Stars with the worst personal hygiene; Stars who used to be strippers; Superhero Bits: The Real Doomsday is Out There, Comic Accurate Guardian; Dumb things in Thor nobody ever talks about; The best Star Wars stuff that Disney doesn't care about; Worst films of 2016; Bloopers that cost filmmakers a ton of money; MMAjunkie/UFC and MMA news, rumors, live blogs and videos; Free Tetris; the Cedar Rapids Gazette; Endless Entertainment; Aquaman extended look teases comic-accurate suit; Fake documentaries that totally fooled viewers: Bigfoot didn't get captured; Hilarious artistic fails that look nothing like their subject; The most bizarre answers given by game show contestants; How Rick may finally die on The Walking Dead; Historic artifacts we still can't explain; The Real "Sword in the Stone" is in a Church in Italy; The University of Glasgow – University news; History's Greatest Hoaxes; Things about ancient Egypt that still can't be explained; AC/DC's tragic real life story;" and "Popes who were actually terrible people" (Employer's Exhibit G). The claimant viewed these websites from 8:47 p.m. to 5:23 a.m. (Employer's Exhibit G). The employer's handbook states, "The unauthorized, excessive, improper, careless, destructive, or unsafe use of operation of DDC owned equipment may result in disciplinary action up to and including termination of employment" (Employer's Exhibit B).

The employer expected the claimant to be on the floor, or checking the weather, ordering supplies or working on a machine. The claimant should have been on the floor and accessible to employees rather than sitting in the office during his entire shift. Employees who needed to speak to the claimant had to seek him out in the office.

The claimant received a final written warning August 7, 2018, regarding his conduct and behavior and he received a previous verbal warning (no date provided) about how to deal with personnel at work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant clearly violated the employer's internet usage policy. The employer only provided the claimant's internet usage records for one shift and during that shift the claimant was accessing non-work related material most of his shift. The employer warned all employees about use of company computers and equipment for non-work related purposes in the May 2, 2018, email. As a supervisor, the claimant knew or should have known the employer expected him to be actively performing his job rather than sitting in the office searching non-work related material online. This was not an isolated incident.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The October 29, 2018, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn