

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA L SMITH
Claimant

APPEAL NO. 10A-UI-04923-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PUTMAN INC
Employer

OC: 02/14/10
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 22, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 13, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Tammy Smith. Bruce Putman participated in the hearing on behalf of the employer with a witness, Kelly Peterson.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked as an administrative assistant for the employer from September 25, 2009, to February 15, 2010. The claimant was informed and understood that under the employer's work rules, employees were not supposed to be accessing the internet during work hours. She had been warned about this several times.

On February 15, 2010, there was a snow storm and a client needed the employer to line up 40 snow shovellers. Personnel in the office divided the list in the morning to start calling workers in. Later in day, Kelly Peterson, the senior recruiter, asked the claimant how the calling was going. The claimant told her that she had not started calling in. She insisted she had been busy with other work.

After the claimant left for the day, Peterson looked at the internet history of sites visited that day. She discovered that the claimant has spent a substantial amount of time accessing social networking sites and other websites for non-business purposes during work hours.

Peterson and the manager, Deann Schaeffer-Remington, discussed what Peterson had found and decided to discharge the claimant. Schaeffer-Remington informed the claimant that she

was not doing her job, her desk was a mess, and her trash was overflowing. She was discharged for unacceptable work performance, with the final straw the claimant's improperly accessing the internet for non-business purposes.

The claimant filed for and received a total of \$390.00 in unemployment insurance benefits for the weeks between February 14 and March 6, 2010.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's conduct in accessing the internet during work hours was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated March 22, 2010, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css