

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ADAM D BUGOS**

Claimant

**APPEAL NO. 09A-UI-02360-C**

**ADMINISTRATIVE LAW JUDGE**

**NUNC PRO TUNC DECISION**

**PINNACLE FOODS GROUP**

Employer

**Original Claim: 01/04/09**

**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Pinnacle Foods Group (Pinnacle) filed an appeal from a representative's decision dated February 4, 2009, reference 01, which held that no disqualification would be imposed regarding Adam Bugos' separation from employment. After due notice was issued, a hearing was held on March 31, 2009, in Burlington, Iowa. Mr. Bugos participated personally and was represented by Irving King, Attorney at Law. Exhibit A was admitted on Mr. Bugos' 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. Bugos was separated 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. Bugos was employed by Pinnacle from April of 2001 until January 7, 2009. He was last employed full time in the warehouse. He was discharged based on an allegation that he violated the employer's computer system policy. Prior to his separation, Mr. Bugos was not provided a copy of the employer's nine-page "Information and Computer Systems Policy" (Exhibit One). He did, on January 28, 2008, acknowledge understanding of the one-page "Information and Computer Systems Policy" (Exhibit Two), which set forth five terms for use of the system.

The document signed by Mr. Bugos on January 28, 2008, 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. Bugos had 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. Bugos' job allowed him access to the computer system. There were rumors in the plant that the information was available on the computer. Mr. Bugos accessed the files and transferred them to a "zip" drive for later viewing. He did not tell anyone else how to access the information.

The employer met with Mr. Bugos on November 19 and he acknowledged that he had accessed the files and copied them. He continued to work at his normal job until notified of his discharge on January 7, 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 department concluded its investigation shortly before Mr. Bugos was notified of his discharge. The IT report did not disclose anything different about his 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 transferred the information to a "zip" drive, Mr. Bugos was discharged. The above matter was the sole reason for the discharge.

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

Mr. Bugos was discharged from employment. 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. Bugos' conduct on November 19, 2008. He acknowledged engaging in the conduct that gave rise to his discharge. However, he was not discharged at that time or even suspended pending a further review. The employer waited over six weeks before discharging him. The employer's delay precludes considering the November 19 acknowledgement as a current act in relation to the January 7 discharge date.

Even if the administrative law judge were to conclude that the employer's delay was justified, disqualifying misconduct would still not be established. Mr. Bugos 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. Bugos had no work-related reason to have the information. At most, he used poor judgment in accessing and copying 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 discharge Mr. Bugos. However, conduct that might warrant a discharge 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. Bugos' 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 February 4, 2009, reference 01, is hereby affirmed. Mr. Bugos was discharged 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

cfc/kjw