

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

KAYLA R FULRATH
302 BANK ST
SABULA IA 52070

JILL BLINKINSOP AGENCY
308 N 2ND ST
CLINTON IA 52732

Appeal Number: 04A-UI-06029-HT
OC: 05/09/04 R: 04
Claimant: Respondent (2)

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 is 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 95.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Jill Blinkinsop Agency (Blinkinsop), filed an appeal from a decision dated May 24, 2004, reference 01. The decision allowed benefits to the claimant, Kayla Fulrath. After due notice was issued a hearing was held by telephone conference call on June 22, 2004. The claimant participated on her own behalf. The employer participated by Owner Jill Blinkinsop and Office Manager Michele Krogman.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Kayla Fulrath was employed by Blinkinsop from November 10, 2003 until May 10, 2004. She was a part-time marketing assistant. On February 26, 2004, the claimant received a copy of the policies and procedures. This document included a statement regarding the use of company e-mail and internet, and provided for discipline up to and including discharge for misuse of either.

On May 5, 2004, Administrative Assistant Michele Krogman notified Owner Jill Blinkinsop the claimant had spent the majority of her time in the office that day typing a college paper for her boy friend. When not typing the paper she had been playing games on the Internet. The work assignment the claimant had received for that day had not been completed. Ms. Krogman also stated she had seen the claimant using the company computers and Internet to play games in the past as well as accessing personal e-mail accounts.

Ms. Blinkinsop had been concerned over Ms. Fulrath's declining productivity during the past few months and had spent time at staff meetings talking about effective use of office time, but the claimant's productivity did not improve. She had worked at a satisfactory level during the beginning of her employment.

The claimant was absent on May 6 and 7, 2004, then was notified on Monday, May 10, 2004, she was discharged. She acknowledged playing computer games, using the company e-mail for personal use and typing her boy friend's term paper.

Kayla Fulrath has received unemployment benefits since filing a claim with an effective date of May 9, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

871 IAC 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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant had received a copy of the policies and procedures for the agency only a few weeks before she was discharged. By her own admission she was playing computer games, typing her boy friend's term paper and accessing her personal e-mail accounts when she should have been working on the assignments given to her by the employer. The fact that her use of the company Internet and e-mail system was excessive is evidenced by her decline in productivity, in spite of the fact she had proven early in her employment that she was capable of working to a satisfactory level. The claimant used the time during which she was being paid by Blinkinsop to do personal work is conduct not in the best interests of the employer. She is disqualified.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of May 24, 2004, reference 01, is reversed. Kayla Fulrath is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible. She is overpaid in the amount of \$670.00.

bgh/kjf