

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SALLY M WORBY

Claimant

THE UNIVERSITY OF IOWA

Employer

APPEAL NO: 10A-UI-02372-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/17/10

Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The employer appealed a department decision dated February 11, 2010, reference 01, that held the claimant was not discharged for misconduct on January 19, 2010, and benefits are allowed. A telephone hearing was held on March 24, 2010. The claimant participated. Mary Eggenburg, Benefits Specialist, and Tadd Miller, Business Manager, participated for the employer. Claimant Exhibit A was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on January 24, 2005, and last worked as a full-time account representative in the pharmacy department on January 19, 2010. The claimant received a written warning about missing work due to illness on April 29, 2009. The claimant received a one-day suspension on July 13, and a three-day suspension on December 3 for violation of the employer Internet policy.

The employer had a low productivity issue with the claimant, so it ran a productivity report on January 11, 2010 for a period from December 28. The report identified the claimant user-name with five websites accessed that was not work related. The report showed the claimant had accessed another staff work list. The employer conducted an investigative interview on January 14. The claimant denied accessing non-work-related websites during work time. The claimant stated she was authorized to access a staff employee work list for business purposes.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for a current act of misconduct in connection with employment on January 19, 2010.

The employer did not provide a copy of its Internet usage and/or staff work access policies as evidence in this hearing. The claimant denied accessing the five websites cited by the employer and there was no documentation offered to prove otherwise. The employer did not offer a witness to refute the claimant was given permission to access another staff's work list. There is no current act of misconduct established in this matter after the three-day suspension of December 3.

DECISION:

The department decision dated February 11, 2010, reference 01, is affirmed. The claimant was not discharged for a current act of misconduct on January 19, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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