

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH R KIEFER
Claimant

APPEAL NO. 12A-UI-05180-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GKN ARMSTRONG WHEELS INC
Employer

OC: 04/08/12
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Joseph Kiefer, filed an appeal from a decision dated April 30, 2012, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on May 30, 2012. The claimant participated on his own behalf. The employer, Armstrong Wheels, did not provide a telephone number where a witness could be contacted and did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Joseph Kiefer was employed by Armstrong Wheels from November 1994 until March 26, 2012 as a full-time team leader. On March 26, 2012, he was discharged for having pornographic and other inappropriate material on his company computer. The claimant alleged other employees, including managers, had been forwarding these e-mails to him since 1999, but he had never forwarded them on to anyone else. He found them inappropriate but never complained to human resources about the material. Instead he kept it on his computer as potential blackmail if any of the managers attempted at any time in the future to discharge him.

This store of material was discovered by the employer and Mr. Kiefer was discharged. He knew it was against company policy to have such material on his computer but felt since he had not forwarded it on, and he intended to keep it only as future blackmail, it would be acceptable to keep it.

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.

Whatever the claimant's motives may have been in keeping the inappropriate material on his computer, he nonetheless violated a known company policy by having it there. He could have printed it off and kept it in a file, then deleted the e-mail from his computer if his intention was just to prove others were guilty of violating company policy. To retain this material for 13 years seems excessive and, after such a long time, meaningless.

The employer has the right to expect employees to obey reasonable company policies. Not keeping company computers free of inappropriate non-business related material is a violation of the duties and responsibilities the employer has the right to expect of an employee. It is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of April 30, 2012, reference 01, is affirmed. Joseph Kiefer is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs