

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY L SCHMITT
Claimant

APPEAL NO. 07A-UI-05819-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WS LIVE LLC
ADVANCED DATA COMM
Employer

OC: 05/06/07 R: 04
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Jeffrey Schmitt, filed an appeal from a decision dated May 29, 2007, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 27, 2007. The claimant participated on his own behalf and was represented by Attorney Sarah Meyer. The employer, Advanced Data Comm (ADC), participated by Director of Human Resources Carla Donar. Exhibit A was admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Jeffrey Schmitt was employed by ADC from June 3, 1996 until May 8, 2007, as a full-time marketing manager. During the course of his employment, he received evaluations from at least two different supervisors in 2002, 2003, and 2006. They all mentioned the problems he had with communicating. His style was described as lacking tact and diplomacy, he was perceived as being frustrated, inflexible, impatient, condescending, controlling, offensive, overbearing, demanding and intimidating. He was advised others perceived him as not valuing their opinions and not being open to new ways of doing things. The evaluations also admonished him for losing control and having confrontations which created a negative impact on others. It further advised him he should focus on the “right way” to communicate and not to share inappropriate opinions about others and the company while in the work place.

On May 2, 2007, the claimant sent an e-mail to CEO Tim Houlney requesting a meeting so he could discuss his career path and that he be able to join the executive team. Mr. Houlney wrote back saying he wanted Mr. Schmitt to “look at the big picture” and his place in it, and that a meeting would be set soon. On May 7, 2007, the claimant sent back an e-mail saying he appreciated the replay but felt he had “heard it all before” and “knew how it played out.”

On May 8, 2007, a meeting was held with some clients in the morning and afterward Mr. Houlney said he wanted to meet with the claimant that afternoon around 2:00 p.m. The claimant then sent a long e-mail to the CEO outlining more of his concerns. As with the e-mail the day before, it mixed compliments immediately followed by criticism of Mr. Houlney personally, other members of the executive team, and the manner in which the business was being run.

The meeting was rescheduled for 2:45 p.m. in the office of General Manager Mike Budde with Human Resources Director Carla Donar present and Mr. Houlney participating by phone. Mr. Schmitt was notified he was discharged because of the disrespectful tone of the e-mail he had sent earlier.

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.

It is easy to understand an employee's frustration with the work environment from time to time which might give rise to some inappropriate communication. But given the number of years during which Mr. Schmitt's evaluations mentioned his many problems with communication, the e-mail of May 8, 2007, was not an isolated incident. The claimant attempted to point out that he made complimentary statements to Mr. Houlney, but it is noted any such positive comments were immediately followed with sharp criticism of a personal or professional nature. Mr. Schmitt was the marketing manager but obviously not a part of the executive committee, and it therefore

does not appear that his job duties included criticizing management on the way the business was run.

Although the employer encouraged "open and honest communication," this is not a license for lecturing and hectoring the chief executive officer with personal opinions. Mr. Schmitt's conduct was not a one-time error in judgment but the final incident in a long line of inappropriate, unprofessional, and unacceptable conduct. It is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of May 29, 2007, reference 01, is affirmed. Jeffrey Schmitt is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw