

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARA B MCCORT
Claimant

APPEAL NO. 09A-UI-07629-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXECUTIVE HOME CARE INC
Employer

OC: 04/05/09
Claimant: Appellant (2)

Section 96.5-2-A -- Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 12, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 11, 2009. Claimant participated. Employer participated by Tim David, Owner. The record consists of the testimony of Tim David; the testimony of Cara McCort; and Claimant's Exhibit 1.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was originally hired in mid 2008 as a part-time receptionist. Throughout her tenure with the company, the claimant's responsibilities increased and she eventually became a full-time office manager in charge of the residential cleaning division of the employer. The claimant was terminated on March 20, 2009. She was terminated by Jennifer David, the general manager. The reason the claimant was terminated was that she again asked for access to the internet in order to perform her job. She had been told once before that she could not have internet access because a prior employee had abused the privilege. When she asked about the internet a second time, she was terminated.

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.

There is no evidence of misconduct in this case that disqualifies the claimant from receiving unemployment benefits. Mr. David testified that the claimant had been told that she could not use her cell phone at work and that he was never going to allow her to have access to the internet, even though she had wanted the internet to access weather information for a weather log she needed to keep. Mr. David did not want the claimant to have internet access because a prior employee had used the internet for personal business and had looked up the price of a purse that Jennifer David had. It was his position that he "warned" her that he never wanted her to bring up the subject again.

On March 20, 2009, during a meeting with Jennifer David over servicing of a vehicle, the claimant tried to discuss with her the need for resources to do her job, including internet access. The claimant got emotional and Jennifer David said that the claimant had been warned and that she just needed to go. Mr. David said that as far as he was concerned the claimant had been warned about asking for the internet and that was it.

Misconduct that disqualifies an individual for unemployment benefits requires a wanton and deliberate disregard of the employer's interests. The employer obviously had some strong views on whether he would allow the claimant to have access to the internet. At best the claimant may have shown poor judgment by asking a second time. The employer seemed to be dissatisfied with the claimant's job performance, but that does not establish misconduct under unemployment insurance law. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated May 12, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css