

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TIFFINY L EVANS**  
Claimant

**GREG'S LAWN SERVICE INC**  
Employer

**APPEAL NO: 12A-UI-11739-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/22/12  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated September 24, 2012, reference 02, that held she was discharged for misconduct on July 25, 2012, and benefits are denied. A telephone hearing was held on October 24, 2012. The claimant participated. Linda Simon, Office Manager, Greg Scharf, President, Donna Scharf, VP, and Barb Burns, Accountant, participated for the employer. Employer Exhibits A – D (29 pages) were 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 as a full-time administrative assistant on February 14, 2011, and last worked for the employer as a billing administrator on July 23, 2012. She was let go by the employer without explanation on July 25.

The employer had an issue about the claimant working overtime so it reviewed her computer for business use during the last week of employment. It found some e-mail communications and a claimant résumé dissemination that are not business related. Claimant reviewed the e-mails and attributes about eight minutes of time to this matter. She used her computer to transmit her résumé, not prepare it.

The employer does not have an employee handbook. It does not have a written policy for employees that defines what personal computer use is allowed and at what times. The employer did review this matter at employee meetings. At a May 11 meeting attended by claimant the employer issued a reminder that a personal call or e-mail must be done before scheduled work time or during lunch. Abuse of company time will not be tolerated. A July 16 meeting reiterated this issue.

The employer did not discipline claimant for any reason prior to discharge and it did not tell her she was being discharged due to stealing the employer time by abusing the personal use of computer policy. It also has an issue with claimant's résumé statement about a legal issue but did not tell claimant to omit it from her résumé at discharge or any time later.

**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.

The administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on July 25, 2012.

The employer failed to establish the required standard of behavior regarding personal use of an employer computer due to a lack of a written policy, and disciplining claimant for such use prior to discharge. The personal use evidence from the employer is minimal (eight minutes or less) and the claimant résumé was transmitted, not prepared. If the employer had a serious issue with any statement in the résumé about a legal issue it should have requested claimant to delete it at the time of discharge or in writing at a later date. Job disqualifying misconduct is not established.

**DECISION:**

The department decision dated September 24, 2012, reference 02, is reversed. The claimant was not discharged for misconduct on July 25, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs