

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENLEY A MEYER
Claimant

APPEAL NO. 11A-UI-07438-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 05/08/11
Claimant: Appellant (1)

Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Kenley Meyer filed a timely appeal from the June 1, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 30, 2011. Mr. Meyer participated. Hannah Cook represented the employer and presented testimony through Todd Quint.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kenley Meyer was employed by Stream International on a full-time basis from 2006 until May 10, 2011, when the employer discharged him from the employment. From fall 2008 onward, Mr. Meyer was a team manager. Mr. Meyer worked in a call center environment and supervised 10 to 12 subordinates who worked in the same work bay. From December 2010 onward, Todd Quint, services delivery manager, was Mr. Meyer's immediate supervisor.

On May 4, 2011, Mr. Quint met with Mr. Meyer and other team managers to let them know that a team manager had been discharged for viewing inappropriate content on his work computer and to remind the team managers to avoid similar conduct.

The employer had a written policy that restricted computer use to job-related matters. The policy had been reviewed with Mr. Meyer at the time of hire and when Mr. Meyer was promoted to team manager. As team manager, Mr. Meyer was responsible for enforcing the policy amongst his subordinates.

On May 6, the employer received complaints from two team managers that Mr. Meyer was viewing inappropriate content on his work computer. The employer directed the information technology department to monitor and document Mr. Meyer's computer use during his shift on

Sunday, May 8, 2011. Human Resources Generalist Hannah Cook and Todd Quint reviewed the record provided by the I.T. staff.

The record of Mr. Meyer's May 8 computer use indicated that Mr. Meyer had inappropriate content opened on his computer for the first four hours of his shift. During that time, Mr. Meyer played video games, viewed sports video streams, and lingered for an hour on an inappropriate website containing vulgar, patently offensive content. Much of the offensive content was sexual in nature. In addition, Mr. Meyer shared some of the offensive content with another team manager. This sharing of the offensive content was for personal entertainment purposes, not for work-related purposes. Mr. Meyer engaged in this conduct while he was supposed to be performing his responsibilities of monitoring the performance of his subordinates. Mr. Meyer engaged in the conduct in the same work bay where 10 to 12 customer service representative were performing their duties.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board,

616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

The weight of the evidence in the record does not support Mr. Meyer's assertion that the computer use in question was work-related. The weight of the evidence establishes that Mr. Meyer knowingly and intentionally violated the employer's Internet use policy to view content he knew was prohibited by the policy. The weight of the evidence establishes that the conduct was extensive on May 8, lasting for hours, and occurred at a time when Mr. Meyer was supposed to be supervising other employees. The weight of the evidence establishes that the intentional violation of the policy occurred just a few days after Mr. Quint had specifically admonished Mr. Meyer and others to avoid such conduct. At the same time Mr. Meyer received this warning, he was aware that another team manager had just been discharged for viewing inappropriate conduct on his work computer. To make matters worse, Mr. Meyer engaged in the prohibited conduct in the presence of 10 to 12 subordinates. The conduct was in willful and wanton disregard of the employer's interests.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Meyer was discharged for misconduct. Accordingly, Mr. Meyer is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Meyer.

DECISION:

The Agency representative's June 1, 2011, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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