

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BETHANI D LINDER**  
Claimant

**APPEAL NO. 07A-UI-08019-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CAROL A OGLESBY CPA**  
Employer

**OC: 02/04/07 R: 04**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Bethani Linder (claimant) appealed a representative's August 16, 2007 decision (reference 11) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Carol Oglesby (employer) for failure to follow instructions in the performance of her work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 5, 2007. The claimant participated personally. The employer participated by Carol Oglesby, Owner.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 12, 2007, as a full-time assistant. While the claimant was supposed to be working she was visiting myspace.com and singles sites on the Internet.

On July 3, 2007, the computers would not hook up to the Internet after the claimant worked on them. The employer did not trust the claimant to be alone with the computers. She told the claimant to appear for work at 1:00 p.m. on July 5, 2007, after the holiday. The claimant appeared at 7:30 a.m. on July 5, 2007, stating she should have 40 hours of work. The employer sent the claimant home. When the claimant returned to work the employer placed the claimant on two weeks of probation due to the damage the claimant caused to the computers. The employer warned the claimant she would be fired if she did more than her required work on the computers.

The claimant downloaded a media player and Adobe updates. When the computers did not work properly the claimant called a friend to look at the computers. The employer has confidential information on the computers and would never have allowed the claimant's friend to access her computer if the employer had known about the problem. When the problem was not remedied the employer had to pay \$210.00 to get the computers fixed. Norton anti-virus was

turned off. On or about July 17, 2007, the claimant disconnected the computers from the network, ran disc defrag and disc cleanup. The employer discovered the problem on July 18, 2007. The employer worked on the problem from 6:00 p.m. until 2:00 a.m. On July 19, 2007, the employer terminated the claimant.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to conduct themselves in a certain manner. The claimant disregarded the employer's right by intentionally and repeatedly failing to follow the employer's instructions. The claimant's disregard of the employer's interests is misconduct. As such she is not eligible to receive unemployment insurance benefits.

**DECISION:**

The representative's August 16, 2007 decision (reference 11) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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