

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIM L SMITH
Claimant

APPEAL NO: 08A-UI-03087-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE HON COMPANY
Employer

**OC: 02/24/08 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Tim L. Smith (claimant) appealed a representative's March 20, 2008 decision (reference 01) that concluded he was not qualified to receive benefits, and the account of The Hon Company (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 14, 2008. The claimant responded to the hearing notice, but was not available for the hearing. A message was left for the claimant to contact the Appeals Section immediately. The claimant did not respond to the message left at 9:00 a.m. Josh Blair, Mike Filipek and Sarah Busha appeared on the employer's behalf. During the hearing, Employer Exhibits One through Five were offered and admitted as evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 8 2002. The claimant worked as a full-time production technician. The claimant received a copy of the employer's email policy. The policy informed employees that the employer discouraged employees from using the employer's Internet for personal use. The employer, however, specifically prohibited employees from using the employer's Internet or email system to access, receive, display or transmit sexually oriented, vulgar, or material that a reasonable person would find offensive. (Employer Exhibit One.) The claimant received and transmitted material that was sexually oriented and could be offensive to some people. (Employer Exhibits Two, Three and Four.) The claimant also frequently used the employer's email system to converse with co-workers about personal matters. The employer's policy did not allow employees to excessively use the employer's email system for personal business.

The employer was investigating an unrelated complaint when problems with the claimant's email usage was discovered. The employer not only learned that 80 to 90 percent of the

claimant's emails were personal, but he also received and sent offensive or vulgar emails. The employer also learned the claimant received another employee's emails by mistake and failed to report this to anyone in management so this problem could be resolved.

After learning how often the claimant violated the employee's email policy, the employer discharged the claimant on February 28, 2008. Other employees who violated the employer's policy were also discharged or disciplined. On February 28, the claimant admitted he received emails for another employee and did not contact the appropriate official to have his name removed from a group. Their emails were not meant for the claimant to see or read. (Employer Exhibit Five.)

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Even though the claimant had not received any previous warnings, he knew or should have known he was violating the employer's email/Internet policy. The claimant also understood he received emails intended for another person and he should have reported this but did not for personal reasons. The facts establish the claimant intentionally and substantially violated the employer's policy. Therefore, as of February 24, 2008, the claimant is not qualified to receive benefits.

DECISION:

The representative's March 20, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 24, 2008. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employers' account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs