

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BETTE J HERRIG

Claimant

APPEAL NO: 14A-UI-09201-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION

Employer

OC: 07/27/14

Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's August 27, 2014 (reference 01) determination that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated at the September 25 hearing. Diana Perry-Lehr represented the employer. Norm Granback, General Manager, and Carole Shutts, Director of Sales, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

In June 2009 the claimant started working for the employer as a full-time sales manager. When the claimant started working, she received a copy of the employer's Internet policy that informed her she could not use the employer's computer or Internet for personal use. The claimant used the employer's computer to check on items she listed to sell on a resale website, she checked her bank account, and she responded to resumes she had sent to other employees. The claimant observed that other employees, including her supervisor, used the employer's computers and Internet for personal reasons. The employer learned about the extent the claimant used the employer's computer for personal reasons in early July 2014.

On July 15 the employer talked to the claimant and told her to curtail her use of the employer's computer for personal reasons. The claimant explained that she had to look at her bank account every day because she was a victim of identity theft. The employer suggested she go to the public library and use computers at the library. The claimant did not have Internet at her home and did not believe her local library was open when she was off work.

After the July 15 discussion, the employer checked the claimant's browser history and discovered she still used the employer's computer to check her bank account and sent some personal emails through her Gmail account. The employer also discovered the claimant daily deleted her browser history. The employer concluded the claimant tried to hide the fact she was still using the employer's computer for personal reasons. On July 24 the employer suspended the claimant after discovering she still used the employer's computer for personal reasons.

Between July 24 and July 28 the employer checked with businesses the claimant reported she had made sales calls to. Two of the three businesses indicated they did not know the claimant's name. As a result of this information, the employer concluded the claimant had not been honest about the sales calls she made.

On July 28 the employer discharged the claimant for using the employer's computer and Internet for personal business, for being dishonest about visiting three businesses, for displaying a negative attitude, for failing to ask potential customers probing questions, and for being on the phone too long. During her employment, the employer had not given the claimant any evaluations or counseled her about any problems until July 15, 2014.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence does not establish that the claimant intentionally tried to hide the fact she continued to use the employer's computer and Internet for personal reasons. The claimant knew and understood the employer could find the websites she visited even if she deleted them from her browser history. In June when the employer told her not to delete any browser history connected with the Opera program, she did not.

The employer may not have been satisfied with the claimant's work performance, but the employer did not give the claimant any evaluations or warnings about this issue until she was discharged. The claimant asserted she made the contacts she reported. While an employee of a business may not know the claimant by name, they may recognize the claimant if they saw her. Since the employer did not have anyone with the three businesses at the hearing, the claimant's testimony that she made the contact she reported must be given more weight than the employer's reliance on unsupported hearsay information.

The one issue that remains is whether the claimant failed to follow the employer's instruction to curtail her use of the employer's computer and Internet for personal reasons. Curtail can mean to limit, curb, decrease, and reduce. The facts establish the claimant decreased her use of the employer's computer. After July 15 the claimant still checked her personal bank account and responded to some Gmail messages. Since the employer did not prohibit her from using the employer's computer and Internet for personal reasons, the employer did not establish that the claimant committed work-connected misconduct. The claimant used poor judgment when she continued to check her bank account after the employer suggested she use computers at her local library. The claimant should have recognized that her job was in jeopardy if she did not find another way to check her bank account.

The employer had several business reasons for discharging the claimant. But the claimant did not commit work-connected misconduct. As of July 27, 2014 the claimant is qualified to receive benefits.

DECISION:

The representative's August 27, 2014 (reference 01) determination is reversed. The employer discharged the claimant for business reasons. The claimant used poor judgment, but she did not commit work-connected misconduct. As of July 27, 2014 the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

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