

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**JONATHAN M HOPPES  
107 BELLAIRE  
WATERLOO IA 50701**

**VOLT TECHNICAL RESOURCES  
c/o TALX CORPORATION  
PO BOX 749000  
ARVADA CO 80006-9000**

**VOLT TECHNICAL RESOURCES  
2421 N GLASSELL  
ORANGE CA 92865-9000**

**Appeal Number: 06A-UI-00229-CT  
OC: 09/04/05 R: 03  
Claimant: Respondent (3)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct  
Section 96.6(2)a – Timeliness of Protests

STATEMENT OF THE CASE:

Volt Technical Resources filed an appeal from a representative's decision dated December 29, 2005, reference 02, which held that the employer had failed to file a timely protest to the claim of Jonathan Hoppes. After due notice was issued, a hearing was held by telephone on January 24, 2006. Mr. Hoppes participated personally. The employer participated by Sandy Brookhart, Regional Payroll Coordinator, and Tina Miller, On-Site Program Coordinator.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Hoppes filed a claim for job insurance benefits

effective September 4, 2005. Notice of the claim was mailed to the employer's corporate office on September 8, 2005. No notice was sent to the employer's authorized representative, which at the time was Employers Unity, Inc. The protest form was returned to Workforce Development on September 19, 2005 by Employers Unity, Inc. There were no boxes checked on the protest form itself, but there was an accompanying document that indicated Mr. Hoppes had been discharged for violation of rules. Because there were no boxes checked on the form itself, the documents were not treated as a protest. The employer did not learn that benefits had been allowed and charged to its account until a statement of charges for the third quarter of 2005 was received.

Mr. Hoppes was employed by Volt beginning January 20, 2004. He completed an assignment with John Deere on January 21, 2005, and was reassigned to a different John Deere component on January 24, 2005. He was removed from the assignment on September 6, 2005 because of Internet usage. During his first assignment with John Deere, Mr. Hoppes had been given an "allowance" of approximately \$25.00 to use for personal Internet charges. He was notified if his Internet usage exceeded the allowance. He believed the same to be true on his second assignment with John Deere. His supervisor from the second assignment was aware that Mr. Hoppes was using the work computer for school purposes. He was only admonished not to use the more expensive Internet formats. Mr. Hoppes was never warned that he was in danger of losing his job because of his Internet usage.

#### REASONING AND CONCLUSIONS OF LAW:

The first issue in this matter is whether the employer filed a timely protest. Although the notice of claim was not sent to the employer's agent, it was received and returned to Workforce Development in a timely manner. The fact that no boxes were checked on the protest form is not fatal, since the form was accompanied by a separate document indicating the protest issue. For the above reasons, the administrative law judge concludes that the employer filed a timely protest as required by Iowa Code section 96.6(2).

The next issue in this matter is whether Mr. Hoppes was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Hoppes was discharged because of his internet usage. The administrative law judge appreciates that the employer has a policy prohibiting employees from using a client company's computers and equipment for personal business. The client company had the right to allow usage, Volt's policy notwithstanding. By giving Mr. Hoppes an allowance to cover his internet usage, it was reasonable for him to assume that his usage was allowed. By telling not to use a certain internet format, it was reasonable for him to assume that all other formats were permissible. The administrative law judge cannot conclude from the evidence that Mr. Hoppes was on clear notice that he was engaging in conduct that might lead to his discharge.

For the reasons stated herein, the administrative law judge concludes that the employer has failed to establish that Mr. Hoppes should be disqualified from receiving benefits. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). Benefits are allowed.

DECISION:

The representative's decision dated December 29, 2005, reference 02, is hereby modified. The employer filed a timely protest to Mr. Hoppes' claim. Mr. Hoppes was discharged, but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kjw