

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PETER HOLMES**

Claimant

**APPEAL NO: 07A-UI-09696-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BEST BUY STORES LP**

Employer

**OC: 09/16/07 R: 02  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Best Buy Stores, LP (employer) appealed an unemployment insurance decision dated October 15, 2007, reference 01, which held that Peter Holmes (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 30, 2007. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Brandi Skinner, Operations Manager; Jeff Clark, General Manager; and Lesley Buhler, Employer Representative. Employer's Exhibits One through Four were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-related 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 employed as a full-time appliance sales associate from April 25, 2006 through September 20, 2007. He was discharged for accessing confidential information without authorization and sharing that information with co-employees. The employer's computers are password protected but the operations manager gave the claimant her computer password because he needed access to certain documents for one of his job duties. The claimant's job code did not provide him with authorization to access the needed documents.

On September 3, 2007 the operations manager sent a detailed email from her home on her work e-mail account that discussed confidential employee information. The e-mail discussed employee promotions, transfers and wage increases. The information was confidential as the employees themselves had not been notified of the information. The claimant accessed the operations manager's email account, read the e-mail and shared it with other employees. The employer became aware of the claimant's actions near the same time as numerous employees

were discussing it. The employer investigated the matter and referred it on to the human resources department. The claimant was questioned on September 19, 2007 and discharged on September 20, 2007.

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

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a.

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 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 substantial and 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 claimant was discharged for accessing confidential information and sharing that information with other employees. The operations manager had given the claimant access to her computer account because he needed certain documents to which he did not have access. The operations manager should have had no expectation of privacy after giving another person access to her email account. However, that does not excuse the claimant's actions which were clearly unacceptable. The analysis does not end here though because the discharge was delayed for several weeks.

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge cannot be based on such past act(s). The termination 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 employer became aware of the claimant's actions shortly after September 3, 2007 and completed its investigation shortly thereafter but did not notify or discuss the matter with the claimant until September 19, 2007. The employer turned the matter over to its human resources department which is where the delay reportedly occurred. Nonetheless, the claimant could have been suspended or at the very least notified the matter was being investigated with further action pending. Inasmuch as the employer has not established a current or final act of misconduct, benefits are allowed.

**DECISION:**

The unemployment insurance decision dated October 15, 2007, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs