

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

JASON E UHL
424 E MAIN ST
LAWTON IA 51030

BEKINS DISTRIBUTION CENTER CO
2501 EXPEDITION CT
SIOUX CITY IA 51111-1164

Appeal Number: 04A-UI-12287-HT
OC: 10/24/04 R: 01
Claimant: Appellant (1)

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant, Jason Uhl, filed an appeal from a decision dated November 16, 2004, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on December 9, 2004. The claimant participated on his own behalf. The employer, Bekins Distribution Center (Bekins), participated by Senior Human Resources Representative Melissa Cain and Vice President of Information Technology Bruce Matthey

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jason Uhl was employed by Bekins from April 19, 1999 until October 25, 2004. He was a full-time desktop administrator.

On February 17, 2004, the claimant received a written warning from Vice President of Information Technology Bruce Matthey regarding personal use of the company's Internet and e-mail services. It advised him his job was in jeopardy if there were any further incidents. Mr. Matthey had a follow-up discussion with him on September 3, 2004, because he had seen the claimant using AOL ICQ chat software a few days before. Mr. Uhl claimed he was asking technical questions of his brother and it was work-related. Mr. Matthey admonished him to clear all such Internet usage with him.

Approximately October 17, 2004, the employer began monitoring the claimant's Internet usage again. He was accessing the Internet through a little-used firewall and had created a connection with another e-mail carrier. He had been sending personal e-mails and accessing sports, news and other non-work-related web sites. After the monitoring was concluded a meeting was held with the claimant on October 25, 2004, where he was shown a printout of all the web sites he had been accessing during company time. He admitted to doing this stating he "had a problem" and asking for another chance. He was discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant had been advised quite explicitly his job was in jeopardy as a result of his use of the company Internet and e-mail systems for personal use. In spite of the warning, he continued to abuse the computer system. He offered no explanation for this other than that he felt other people were using the system for personal business but had not been punished. The employer has the right to expect employees to use the company computer system for business related purposes only and the claimant knew this but elected to ignore the warning. This is conduct not in the best interests of the employer and he is disqualified.

DECISION:

The representative's decision of November 16, 2004, reference 01, is affirmed. Jason Uhl is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

bgh/smc