

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTINA M MCCUMBER
Claimant

APPEAL NO. 13A-UI-09838-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES COLD STORAGE CO INC
Employer

OC: 08/04/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 22, 2013, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on September 20, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Chad Witte participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a billing clerk from April 2012 to July 30, 2013. On July 29, 2013, the claimant accessed a social dating website during work hours using her smartphone and chatted with a man. She told the person when she was getting off work and because she was broke, she was probably going to have to borrow money from petty cash. When the man asked how much money was in petty cash and where she worked, she responded that if she told him that she would have to kill him and she worked at Des Moines Cold Storage Co Inc. The man asked the claimant if there was enough so that no one would notice. She responded that they would notice when the box was balanced and it was short. When he asked if she would act like she did not know what was happening, she replied “ha, ha ya right.”

The man later emailed the employer’s contact emails with the chat messages attached and said that the claimant was chatting online with a perfect stranger and he wanted the employer to know the information she was sharing.

The claimant actually borrowed money from petty cash but with permission from her supervisor and she repaid it the next day. It was common in the workplace for employees, including her supervisor, to use their smartphones to access the internet during slow times even though work rules prohibit it. Her supervisor told her that this was okay as long she finished her work.

The employer suspended the claimant on July 31 and discharged her on August 5, 2013, for violating the employer's work rules about personal use of the internet during work hours and disclosing confidential information to persons outside the company.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

I believe the claimant's testimony about the acceptable internet use practice allowed by her supervisor. Despite this, the claimant's disclosure of the fact that she had access to petty cash, could borrow from petty cash, and where she worked was a material breach the duties and obligations arising out of the contract of employment for someone who was working as a billing clerk for the employer. Work-connect misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated August 22, 2013, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs