

**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**

**DEBBIE K LINDEN
3093 SUNDOWN CT
DUBUQUE IA 52001**

**DUBUQUE RACING ASSOCIATION LTD
P O BOX 3190
DUBUQUE IA 52001**

**MARK J SULLIVAN
ATTORNEY AT LAW
P O BOX 239
DUBUQUE IA 52004-0239**

**STEPHEN KRUMPE
ATTORNEY AT LAW
P O BOX 599
DUBUQUE IA 52004-0599**

**Appeal Number: 04A-UI-10208-CT
OC: 08/29/04 R: 04
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 for Misconduct

STATEMENT OF THE CASE:

Debbie Linden filed an appeal from a representative's decision dated September 16, 2004, reference 01, which denied benefits based on her separation from Dubuque Racing Association, Ltd. After due notice was issued, a hearing was held by telephone on October 13, 2004. Ms. Linden participated personally and was represented by Mark Sullivan, Attorney at Law. Exhibits B and C were admitted on Ms. Linden's behalf. The employer participated by Mary Hentges, Director of Human Resources; Joe Hilby, MIS Department Manager; Brian Southwood, Assistant General Manager; and Tammy Schnee, Assistant Director of Human Resources. The employer was represented by Stephen Krumpe, Attorney at Law. Exhibits One through Nine were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Linden was employed by Dubuque Racing Association, Ltd. from December 20, 2001 until August 27, 2004. She was last employed full time as assistant to the management information systems (MIS) director. On August 13, 2004, Ms. Linden received a written warning alleging that she had failed to provide work logs as directed by her supervisor. She submitted a written response to the warning which raised issues regarding conduct on the part of her supervisor. The employer held a meeting with Ms. Linden and the supervisor, Joe Hilby, on August 18 to address the concerns raised in the response. As a result of the meeting, it was decided that both Ms. Linden and Mr. Hilby were to temporarily report complaints about the other to Tammy Schnee in the human resources department. It was also decided that Mr. Hilby would receive training on supervisory skills and workplace harassment. Both parties were advised that the contents of the meeting would not be discussed with other employees.

The employer decided to prepare a written document for both Ms. Linden and Mr. Hilby to outline the employer's expectations. Mary Hentges sought legal advice on the matter from Stephen Krumpe. On the afternoon of August 20, Mr. Krumpe sent Ms. Hentges an e-mail with two draft memos attached for her review. She was not at work to receive the e-mail on August 20. Ms. Linden was at work on Saturday, August 21, upgrading computers as part of her regular job duties. When she accessed Ms. Hentges' computer, she saw in the "in basket" that there was an e-mail from Mr. Krumpe and that her name and Mr. Hilby's were on the subject line of the e-mail. She was aware that Mr. Krumpe was the employer's attorney. Ms. Linden forwarded the e-mail to herself and then deleted it from Ms. Hentges' "in basket." She did so because she felt Ms. Hentges had breached her promise to keep the issues between her and Mr. Hilby confidential.

On August 23, Ms. Hentges was unable to log on to her computer because Ms. Linden had had to change the password in order to work on the computer on August 21. Ms. Hentges was also unable to log on using the password on file with the MIS department. An outside company was called in to determine the problem. It was the outside company that discovered that the e-mail from Mr. Krumpe had been forwarded to Ms. Linden's computer and deleted from Ms. Hentges' computer. Ms. Linden's conduct was considered to be a violation of the policy prohibiting access to other employee's e-mail. The employer also felt Ms. Linden had violated attorney-client privilege by accessing the e-mail from the employer's attorney.

The employer met with Ms. Linden on August 27 concerning the matter of her August 21 conduct. Ms. Linden denied that she had accessed, opened, and read the e-mail from Mr. Krumpe. She wrote on the termination notice: "this is all false!! I've been framed!!!" Ms. Linden never acknowledged to the employer any aspect of her actions of August 21. She did not acknowledge forwarding and deleting the e-mail until the fact-finding interview held with Workforce Development on September 14, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Linden 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). Ms. Linden was discharged for

forwarding and deleting an e-mail received by someone other than herself. The fact that the e-mail was about her was not justification for her actions. Nor were her actions justified by panic or by her belief that Ms. Hentges had breached the terms of the August 18 meeting. Ms. Linden's job responsibilities gave her access to the contents of other employees' computers. The employer had the right to expect that she would not abuse her position by accessing e-mail intended for others. The employer certainly had the right to expect that she would not delete correspondence based on her personal motivations.

In addition to violating the employer's e-mail policy, Ms. Linden compounded the matter by denying any and all knowledge of the incident and by attempting to shift the blame to others. The conduct which brought about Ms. Linden's discharge constituted a substantial disregard of the standard of behavior the employer had the right to expect. Her conduct was not a good-faith error in judgment as Ms. Linden deliberately took steps she knew to be contrary to the employer's standards. For the reasons stated herein, the administrative law judge concludes that disqualifying misconduct has been established. Accordingly, benefits are denied.

DECISION:

The representative's decision dated September 16, 2004, reference 01, is hereby affirmed. Ms. Linden was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/s