

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LANGEL, JARED, N
Claimant

APPEAL NO. 11A-UI-07138-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 05/01/11
Claimant: Appellant (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Jared Langel filed a timely appeal from the May 25, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 23, 2011. Claimant participated. Hannah Cook represented the employer and presented additional testimony through Todd Quint and Debbie Nelson.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jared Langel was employed by Stream International as a full-time team manager until May 4, 2011, when the employer discharged him for watching mature-rated Netflix movies on his work computer. Mr. Langel's work computer was located in a team bay shared with the 20 to 22 employees under Mr. Langel's supervision. The employer had written policies that prohibited personal use of the employer's computer network system, use of the system to download sex-related material, and use of the system in a way that would interrupt business operations. Mr. Langel had signed his acknowledgment of the policies at the beginning of his employment, had been counseled about the policies and September 2010 after he used his work computer to download and view YouTube videos, and was responsible for enforcing the policy amongst his subordinates.

On May 2, 2011, Mr. Langel was watching a mature audience rated Netflix movie on his computer. The movie displayed on his computer screen included nude women. The movie was visible to others in the vicinity. An employee was offended by the content and reported it to management, including Human Resources Generalist Hannah Cook. When Ms. Cook directed the employer's information technology staff to review the record of Mr. Langel's Internet usage for May 2, 2011, the employer learned that Mr. Langel had deleted his browsing history for May 2.

Ms. Cook directed the employer's information technology staff to actively monitor Mr. Langel's Internet usage on May 3. On that day, Mr. Langel once again used his work computer to log into Netflix, pulled up a mature audience rated movie, and watched the entire two-hour 19 minute movie during work hours, when he was supposed to be supervising the work performed by subordinates.

REASONING AND CONCLUSIONS OF LAW:

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 of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment 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).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The evidence in the record establishes misconduct in connection with the employment that disqualifies Mr. Langel for unemployment insurance benefits. Mr. Langel was well aware of the employer's computer and Internet usage policies. Indeed, Mr. Langel was charged with enforcing the policies. Mr. Langel received a warning for violating the policies in September 2010. During the last two days of the employment, Mr. Langel intentionally violated the policies by watching mature-rated movies containing nudity in the work area he shared with many other employees at a time when he was supposed to be supervising subordinates. The conduct was in willful and wanton disregard of the employer's interests.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Langel was discharged for misconduct. Accordingly, Mr. Langel is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Langel.

DECISION:

The Agency representative's May 25, 2011, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs