

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEREMY POLLOCK**  
Claimant

**APPEAL NO. 10A-UI-10537-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LORAS COLLEGE**  
Employer

**OC: 06/20/10**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Jeremy Pollock filed a timely appeal from the July 16, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 10, 2010. Mr. Pollock participated. Rose Bakey, Human Resources Payroll Specialist, represented the employer.

**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: The employer is a private college affiliated with the Roman Catholic Church. The employer has written conduct guidelines set forth in an employee handbook, which guidelines place employees on notice of their obligation to conform their workplace conduct to the best interests of college, and in keeping with Roman Catholic and moral and ethical standards of conduct. The guidelines provided misuse of college property or property of another as an example of conduct that would not conform to the guidelines. Mr. Pollock had received a copy of the handbook and was aware of the conduct guidelines.

Jeremy Pollock was employed by Loras College as a full-time custodian supervisor from 2007 until June 22, 2010, when Gloria Bentley, Director of Human Resources, discharged him from the employment.

The incident that triggered the discharge was Mr. Pollock's unauthorized personal use of the employer's computer system to access inappropriate Internet websites, including pornographic websites. On June 18, Mr. Pollock accessed the Internet from a work computer during a time when he was not on break. Mr. Pollock read a story concerning an "up skirt" photograph of pop music performer Miley Cyrus. Mr. Pollock conducted a Google search of the topic in search of the photo and accessed multiple sexually explicit websites. Mr. Pollock's actions introduced a virus into the employer's computer system, which brought his conduct to the attention of the employer's Information Technology staff. The I.T. staff reported the conduct to Mr. Pollock's

immediate supervisor and to Ms. Bentley and provided a list of the websites accessed by Mr. Pollock.

### **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).

The weight of the evidence indicates that Mr. Pollock knowingly and intentionally made unauthorized personal use of the employer's computer system to access sexually explicit Internet content in violation of the employer's rules of conduct. Not only did Mr. Pollock access sexually explicit material, but Mr. Pollock's unauthorized use also introduced a virus into the computer system. Mr. Pollock placed the college's computer system at risk. Mr. Pollock's conduct also had the potential of negatively impacting the college's reputation. A reasonable person in Mr. Pollock's position would understand that the conduct was in violation of the employer's written standards of conduct.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Pollock was discharged for misconduct. Accordingly, Mr. Pollock 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. Pollock.

**DECISION:**

The Agency representative's July 16, 2010, 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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