

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERIC M STABENOW**

Claimant

**APPEAL NO. 06A-UI-09819-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PELLA CORPORATION**

Employer

**OC: 09-03-06 R: 02  
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 29, 2006, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on October 23, 2006. Claimant participated. Employer participated through Pam Fitzsimmons, Human Resources Representative; Bill Lahner, Human Resources Representative; Mike Pringle, Supervisor; and Terry Behning, Plant Manager, and was represented by Rick Carter of Sheakley Uniservice.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time logistics operator from March 21, 2005 until September 1, 2006 when he was discharged. Lahner investigated an August 9 report of improper use of company computers after an employee found a paper printed from the printer connected to the primary computer claimant used. The logistics department computer was assessed and reviewed by the IT department. The audit covered the months of July and August 2006 from midnight to 4:00 a.m. when there was no other personnel in the department besides claimant. The audit revealed site visits to Wells Fargo, Camazon.com, Passion.com, Adultfinder.com, Hoverspot.com, and Knoxville raceway sites. During an interview on August 25 with Lahner and Pringle, claimant initially denied but later admitted to visiting Wells Fargo and "Camazon.com" sites while on company time and attempted to justify his usage because of the volume of work he completed. Personal use of the computer during lunch or other breaks is allowed but not on company time and no usage of company computers is allowed to visit sites with a sex theme, regardless of break time.

Dennis Purdy also worked between midnight and 4:00 a.m. but had not been able to work at the computer since he suffered a stroke in January 2006. The only other person assigned to the computer, Joy Dykstra, and whose logon information claimant used, did not work those hours.

Otherwise other employees may have passed by the computer area but had no work business on it.

The claimant has received unemployment benefits since filing a claim with an effective date of September 3, 2006.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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).

Claimant's denial at hearing, especially in the face of two witnesses to his admission and the lack of personnel in the computer area and at the time when he was the only one assigned to use it, is implausible to the point of incredulity. Claimant's repeated access of adult-related sites on the internet for personal use at work during non-break time constitutes a deliberate violation of employer's policy and amounts to disqualifying misconduct. Benefits are denied.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The September 29, 2006, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as 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 claimant is overpaid benefits in the amount of \$2,653.00.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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