

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL D OLSON**  
Claimant

**APPEAL NO. 06A-UI-11096-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CES COMPUTERS**  
Employer

**OC: 10/22/06 R: 12  
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated November 8, 2006, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on December 5, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Amy Green participated in the hearing on behalf of the employer with a witness, Kevin Greer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The employer provides computer support services to client businesses. The claimant worked full time for the employer from February 18, 2002, to October 20, 2006, as a computer specialist who worked onsite at the client business, John Deere. The claimant was informed and understood that under the employer's work rules and John Deere's work rules, he was not to use the computer or email system to transmit any offensive material. Adam Wingert supervised the claimant. The claimant and other employees assigned to work at John Deere have John Deere email addresses and use John Deere network resources.

On October 17, 2006, the claimant forwarded an email by mistake to Wingert that contained twelve image files that portrayed individuals who were passed out and included nudity. The claimant was attempting to forward the email to his wife but for some reason, it was sent in error to Wingert. In the message, the claimant had typed "Something for John to try at next party." The claimant has a 22-year-old stepson named John who lives with his wife and him.

The email was received by Wingert who noticed that it was forwarded by the claimant using his John Deere email address. On October 20, 2006, Wingert informed the claimant that he was discharged and why. The claimant commented that he was trying to forward the email to his wife. He asked about his chances of receiving unemployment insurance benefits and mentioned that he had just bought a new truck. The claimant had never been disciplined for similar conduct, and there was no other reason for his discharge.

## 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.

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.

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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant presents a number of possibilities as to how the message could have been forwarded to Wingert using his email address without his sending the email. The standard to apply here is the preponderance of the evidence standard, which assess what is the most likely fact based on the evidence. I am convinced that the claimant told his supervisors when he was fired that he was trying to send it to his wife, which makes the comment about "something for John to try" logical. His reference to whether he would be eligible for unemployment insurance benefits and buying a new truck are evidence of culpability.

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

**DECISION:**

The unemployment insurance decision dated November 8, 2006, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs