

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRAVIS R COULTER
Claimant

APPEAL NO. 08A-UI-00648-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

**OC: 12/09/07 R: 03
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Travis Coulter, filed an appeal from a decision dated January 11, 2008, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on February 4, 2008. The claimant participated on his own behalf. The employer, Express Services, did not provide a telephone number where a witness could be contacted and did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Travis Coulter was employed by Express Services beginning in November 2005. His last assignment began November 9, 2007, at Bossard Industries for an indefinite period of time.

Around November 20, 2007, the supervisor told the claimant and another temporary employee not to use their computers to surf the internet or play games “for a few days.” After an unspecified period of time Mr. Coulter felt the “few days” had passed and again began playing games on his computer. He would do this while on hold during phone calls and on December 12, 2007, he was seen by a manager at the client company playing “Freecell” while on the phone. The manager talked with the head of the department who contacted Express Services and asked for Mr. Coulter to be removed from the assignment. Rhonda Hall at Express Services notified him by phone the assignment was over and so was his employment, though he was welcome to reapply in six months.

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 claimant had been told to refrain from using the company computer for non-work-related activities "for a few days." After a while he took it upon himself to decide the "few days" had passed and it was once more okay to use the computer to play games. At no time did he ask his supervisor, or the acting supervisor, if this was acceptable. By playing games while on the phone, even on hold, he apparently gave the employer the impression he was not attending to his duties. This caused his removal from the assignment and may have jeopardized Express Service's relationship with this client. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of January 11, 2008, reference 01, is affirmed. Travis Coulter is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs