

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIRK A KIGER
Claimant

**HUMBOLDT COUNTY MEMORIAL
HOSPITAL**
Employer

APPEAL NO: 10A-UI-00608-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/06/09
Claimant: Appellant (1)

Section 96.5-2-a - Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated January 7, 2010, reference 0, that held he was discharged for misconduct on December 11, 2009, and benefits are denied. A telephone hearing was held on February 22, 2010. The claimant did not participate. Mary Moritz, HR Director, and Phil Rose, Laboratory Manager, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant worked for the employer as a full-time laboratory technician from November 16, 1998 to December 11, 2009. The claimant received the employer policies that included a prohibition of using the internet for personal matters. The policy also provides that an employee may be terminated for violation.

In October 2006, Manager Rose spoke to the claimant about an internet issue of not accessing E-Bay while working. The claimant was advised that during his break, the employer provides internet access in the lounge area for personal matters.

An employee advised Manager Rose in December 2009 that he thought the claimant was using a work computer to access the internet for personal matters. On the morning of December 11, Manager Rose checked the laboratory (work) computer and discovered a history of visited websites that included Playboy and Adult Crowd. Rose called the claimant into a meeting with HR Director Moritz. The claimant admitted that he visited the websites and he knew the employer policy. The employer considered not only the policy violation, but nature of claimant's usage in terminating him from employment.

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 administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on December 11, 2009, for violation of the employer's internet policy.

The claimant knew the employer policy, and his violation constitutes job disqualifying misconduct.

DECISION:

The department decision dated January 7, 2010, reference 01, is affirmed. The claimant was discharged for misconduct on December 11, 2009. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css