

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLAS B RYAN
Claimant

APPEAL NO. 09A-UI-09337-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

OC: 05/10/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated June 17, 2009, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 16, 2009. Claimant participated personally. Employer participated by Ann Rodriguez, Terri Hannam and was represented by Kelly Landofi. Exhibit 1, pages 1-12 was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for the employer May 12, 2009. He was discharged for violation of the employer's code of conduct and more specifically breaching confidentiality about an investigation. The employer was investigating an employee, Carl Rush, who received a prize trip from the employer. Mr. Rush was allowed to take a guest. The claimant, who is a friend of Mr. Rush, went as his guest and Mr. Rush did not go. On May 1, 2009 the employer conducted an interview of the claimant with a representative of human resources, Summer Fujiki, and Terri Hannam, Site Business Manager. The claimant was told not to discuss any information that was talked about in the meeting with anyone outside of the meeting. On May 8 the claimant saw Mr. Rush in Ms. Hannam's office with his head down and he sent him a text message, "Do I need to be prepared to meet w anyone? If so... wanna know so our stories match up." Mr. Rush provided a copy of the text message to his employer and the claimant was discharged for violating confidentiality. The claimant did not discuss the contents of the May 1 meeting with Mr. Rush or anyone else.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

The claimant admitted he sent the text message. The content of the message does not disclose any information about the May 1 meeting. The first sentence asks for information from Mr. Rush about whether there might be a meeting that the claimant might have to attend. The second sentence of the text message states that, if there is going to be a meeting, the claimant wanted their stories to match up. The second sentence does not disclose any information about the May 1 meeting. The claimant testified he did not share information about the meeting with Mr. Rush. Ms. Hannam testified Mr. Rush told her that they did not share information about the May 1 meeting.

The administrative law judge holds that the evidence has failed establish that claimant was discharged for an act of misconduct when claimant was alleged to have violated the employer's policy concerning confidentiality. The claimant did not disclose confidential information.

DECISION:

The decision of the representative dated June 17, 2009, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/css