

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL J MIKESH**  
Claimant

**APPEAL NO. 06A-UI-11805-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ATC INC**  
Employer

**OC: 11/05/06 R: 03  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Michael J. Mikesh filed a timely appeal from an unemployment insurance decision dated November 29, 2006, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held December 26, 2006, with Mr. Mikesh participating and being represented by Rod Kleitsch, Attorney at Law. General Manager Todd Philipp, Parts Manager Josh Philipp, and Night Service Manager Dave Crouch participated for the employer, ATC, Inc. Exhibit D-1 was admitted into evidence.

**ISSUE:**

Was the claimant discharged for misconduct in connection with his employment?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Michael J. Mikesh was employed by ATC, Inc. from September 13, 2004 until he was discharged October 17, 2006. At the time of discharge, he was told that it was because of making errors in his work and for viewing inappropriate websites on October 9, 2006. Mr. Mikesh had not viewed inappropriate websites.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence in this record establishes that the claimant was discharged for misconduct in connection with his employment. It does not.

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 employer has the burden of proof. See Iowa Code section 96.6-2. The employer provided no direct testimony that Mr. Mikesh had brought up inappropriate websites at any time near the date of separation. The documentary evidence offered in support of the allegation does not identify by day or time any inappropriate usage of the computer. The employer testified that it had a videotape showing Mr. Mikesh making inappropriate use of his computer, but that videotape was not submitted into evidence. While the employer's evidence was imprecise as to date, time and action, the claimant firmly denied inappropriate computer use. The administrative law judge concludes that misconduct has not been established by the evidence in this record. No disqualification may be imposed.

**DECISION:**

The unemployment insurance decision dated November 29, 2006, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

pjs/pjs