

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEVEN R POHLMANN**

Claimant

**APPEAL NO. 07A-UI-11374-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SECURITAS SECURITY SERVICES USA**

Employer

**OC: 11/04/07 R: 03  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge  
Section 96.3.7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Securitas Security Services USA (employer) appealed a representative's November 29, 2007 decision (reference 01) that concluded Steven R. Pohlmann (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 27, 2007. The claimant participated in the hearing. Michael Thiel, a representative with TALX, appeared on the employer's behalf. Doug Walter, the human resource manager, and Melissa Sepanic, the claimant's supervisor, testified on the employer's behalf. During the hearing Employer Exhibits One through Three were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer on February 16, 2006. The claimant worked as full-time site supervisor and EMT for the employer's client, T & L. Prior to November 7, 2007, T. & L. was not satisfied with the claimant's work performance. The employer decided to hire another site supervisor. The claimant agreed to continue his employment at that job site, but would work as an EMT after the employer hired a new site supervisor. Until a new site supervisor was hired, the claimant continued to work as the site supervisor and as an EMT.

The claimant became frustrated with T. & L.'s demands because T. & L. wanted a document that was not required at any of its other sites where the employer provided security services. The claimant created the document the client wanted. (Employer Exhibit One.) As a result of the frustration the claimant experienced with T. & L.'s requests, he created a parody of the requested document he had created. The claimant created the parody while at work. The

claimant considered his parody a way to release his frustration. (Employer Exhibit Two.) The claimant decided he would show at least one of the other employees the "parody" document he had created. The claimant put the document he created in a payroll folder. The claimant knew all employees had access to the payroll folder. The claimant assumed the client would not look at the payroll folder.

After the claimant placed Employer Exhibit Two in the payroll folder, the client performed an audit of the employer's pass-down method. During this audit, another employee gave the client the payroll folder that contained the claimant's parody document that centered on the client. After the client saw the parody the claimant created, the claimant was not happy. The claimant's parody contained profanity and depicted the client in a very negative way.

Sepanic and Walter learned about the claimant's parody document on November 2, 2007. The claimant admitted he created the document. Pursuant to the employer's policy, the employer discharged the claimant on November 7, 2007. (Employer Exhibit Three.)

The claimant established a claim for unemployment insurance benefits during the week of November 4, 2007. The claimant filed claims for the weeks ending November 17 through December 22, 2007. The claimant received his maximum weekly benefit amount of \$360.00 for each of these weeks.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

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. 871 IAC 24.32(8).

The employer discharged the claimant because the claimant created a document that mocked the client by using profanity. The claimant's decision to place the "parody document" in a folder that anyone could look at amounts to an intentional and substantial disregard of the standard of behavior the employer had a right to expect from the claimant. The employer discharged the

claimant for reasons that constitute work-connected misconduct. As of November 4, 2007, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending November 17 through December 22, 2007. The claimant has been overpaid \$2,160.00 in benefits he received for these weeks.

**DECISION:**

The representative's November 29, 2007 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of November 4, 2007. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant has been overpaid and must repay a total of \$2,160.00 in benefits he received for the weeks ending November 17 through December 22, 2007.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css