

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY S FIXEL
Claimant

APPEAL NO. 10A-UI-08795-S

**ADMINISTRATIVE LAW JUDGE
DECISION**

QUANTAS LOGISTICS INC
Employer

OC: 05/16/10
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer appealed a department decision dated June 18, 2010, reference 04, that held the claimant was not discharged for misconduct on May 17, 2010, and that allowed benefits. A hearing was held in Sioux City, Iowa, on September 14, 2010. The claimant, and Attorney Jay Phipps, participated. Jeffrey Paulson, attorney at law; Eric Hennings, president; Carole Hennings, secretary; Scott Hennings, employee, participated for the employer. Employer Exhibits 1 through 10 were received as evidence.

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 began employment on April 20, 2009, and last worked for the employer as a full-time office manager on May 17, 2010. The claimant received a new Policy and Procedure Manual on April 28, 2010. The policy prohibits personal use of the employer computer for personal business and prohibits personal use of the internet while on company time. A violation of this policy will be handled through the disciplinary policy set forth in the manual or may lead to termination. The manual's progressive disciplinary action provides four steps from coaching, to verbal warning, to written warning, to a termination.

Prior to April 28, the employer did have meetings that included the claimant where the issue of personal use of a company computer for personal business and internet on company was discussed. In late April, President Hennings began to question claimant's work productivity, and he began to monitor her company computer time. He checked the employer computer server from April 28 through May 17 and he discovered the claimant had accessed several websites for personal business.

On May 17, President Hennings confronted the claimant about her personal use of the employer computer and she denied it. When he provided log records to show she had accessed

GoDaddy.com and others, she replied, "You got me." Claimant was discharged, though Hennings told her she could say she quit.

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 failed to establish that the claimant was discharged for misconduct in connection with employment on May 17, 2010.

In order for the employer to establish job disqualifying misconduct, it must show that it established a standard of behavior that it intended to enforce, and warn claimant she could be discharged for any violation. The employer published the policy manual and gave it to claimant less than three weeks prior to discharge. The employer did not follow its manual's four disciplinary steps leading to claimant's discharge on May 17 or at least provide her with a written warning that she had violated computer and internet policy to the point that a further incident would mean discharge.

DECISION:

The department decision dated June 18, 2010, reference 04, is affirmed. The claimant was not discharged for misconduct on May 17, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw