

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT C KORSCHGEN
Claimant

APPEAL NO. 09A-UI-02358-C

**ADMINISTRATIVE LAW JUDGE
DECISION**

PINNACLE FOODS GROUP
Employer

OC: 01/04/09
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Pinnacle Foods Group (Pinnacle) filed an appeal from a representative's decision dated February 4, 2009, reference 01, which held that no disqualification would be imposed regarding Robert Korschgen's separation from employment. After due notice was issued, a hearing was held on March 31, 2009 in Burlington, Iowa. Mr. Korschgen participated personally and was represented by Irving King, Attorney at Law. Exhibit A was admitted on Mr. Korschgen's behalf. The employer participated by Ron Udell, Senior Human Resources Manager, and was represented by Gina Moshiri and John Marino, Attorneys at Law. Exhibits One, Two, Three, Five and Six were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Korschgen was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Korschgen was employed by Pinnacle from July 10, 2000 until January 7, 2009. He was last employed full time as a production technician. He was discharged based on an allegation that he violated the employer's computer system policy. Prior to his separation, Mr. Korschgen was not provided a copy of the employer's nine-page "Information and Computer Systems Policy" (Exhibit One). He did, on January 25, 2008, acknowledge understanding of the one-page "Information and Computer Systems Policy" (Exhibit Two), which set forth five terms for use of the system.

The document signed by Mr. Korschgen on January 25, 2008 provides that all components of the computer system are the property of Pinnacle and that the system is to be used solely for work-related purposes. The document further provides that users of the system have no expectation of privacy in connection with the use of the system. Finally, it provides that violations of the computer usage policy will be subject to disciplinary action. Mr. Korschgen received a copy of the employer's plant rules on March 19, 2008. Plant rule Number 2 prohibits theft of property belonging to either the company or another employee. Rule Number 8

prohibits the misuse or damage to property belonging to the company or another employee. Plant rule Number 15 prohibits reading material other than that which pertains to the individual's job while in the operations areas.

In November of 2008, Pinnacle learned that several employees had accessed files containing bonus and salary information for several management persons. The information had been inadvertently placed on an unsecured drive by the plant manager. Mr. Korschgen's job allowed him access to the computer system. There were rumors in the plant that the information was available on the computer. Mr. Korschgen accessed the files and copied them to a "flash" drive for later viewing. He did not tell anyone else how to access the information and did not share the information with anyone else.

The employer met with Mr. Korschgen on November 19 and he acknowledged that he had accessed the files and copied them. He continued to work at his normal job until notified of his discharge on January 7, 2009. During the interim, Pinnacle's information technology (IT) department investigated to determine which employees had accessed the files and when and whether the files had been downloaded. The IT department concluded its investigation shortly before Mr. Korschgen was notified of his discharge. The IT report did not disclose anything different about his conduct that he had not already acknowledged during his November 19 interview.

After the investigation, the employer decided that those individuals who only accessed and viewed the subject files would receive a written warning. Those who had viewed and shared the information were suspended. Those individuals who had downloaded the information to either another computer or a hardware device or who had printed the information were discharged. Because he had transferred the information to a "flash" drive, Mr. Korschgen was discharged. The above matter was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

Mr. Korschgen was discharged from employment. An individual who was discharged is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer's burden included establishing that the discharge was predicated on a current act of misconduct. 871 IAC 24.32(8). In the case at hand, the employer was fully aware of Mr. Korschgen's conduct on November 19, 2008. He acknowledged engaging in the conduct which gave rise to his discharge. However, he was not discharged at that time or even suspended pending a further review. The employer waited over six weeks before discharging him. The employer's delay precludes considering the November 19 acknowledgement as a current act in relation to the January 7 discharge date.

Even if the administrative law judge were to conclude that the employer's delay was justified, disqualifying misconduct would still not be established. Mr. Korschgen did not "hack" the employer's computer system to obtain information he was not entitled to have. The plant manager made the information available by leaving it on a "common" drive where other employees could access it. It was tantamount to leaving a confidential file on the break room table. There is no doubt that Mr. Korschgen had no work-related reason to have the information. At most, he used poor judgment in accessing and copying the files. However, the definition of "misconduct" specifically excludes that conduct that can be characterized as an isolated instance of poor judgment. 871 IAC 24.32(1).

It was well within the employer's prerogative to discharge Mr. Korschgen. However, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Inasmuch as Mr. Korschgen's conduct did not evince a willful or wanton disregard of the employer's standards as found in either Exhibit Two or Exhibit Three, it is concluded that substantial misconduct has not been established. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated February 4, 2009, reference 01, is hereby affirmed. Mr. Korschgen was discharged by Pinnacle but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs