

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELISABETH E MENADUE**  
Claimant

**APPEAL NO. 08A-UI-07632-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ING USA ANNUITY AND LIFE  
INSURANCE COMPANY**  
Employer

**OC: 11/11/07 R: 02  
Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge for Misconduct  
Section 96.3(7) – Recovery of Overpayments

**STATEMENT OF THE CASE:**

ING USA Annuity and Life Insurance Company (ING) filed an appeal from a representative's decision dated August 15, 2008, reference 04, which held that no disqualification would be imposed regarding Elisabeth Menadue's separation from employment. After due notice was issued, a hearing was held by telephone on September 8, 2008. The employer participated by Stephanie Mahaffey, Variable New Business Manager, and Mikki Kremer, Human Resources Resolution Consultant. The employer was represented by Joseph Ojeda of ADP-UCS. Exhibits One through Ten were admitted on the employer's behalf. Ms. Menadue did not respond to the notice of hearing.

**ISSUE:**

At issue in this matter is whether Ms. Menadue 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: Ms. Menadue was employed by ING from December 10, 2007 until July 16, 2008 as a full-time new business coordinator. She was discharged for violating the employer's internet usage policy.

The employer conducted a review of Ms. Menadue's emails after a coworker complained that she was harassing her. During the review, it was discovered that Ms. Menadue had sent inappropriate emails over the internet system. One of the emails contained pictures of a dead alligator with its stomach contents on display. The contents consisted, in part, of human body parts. Another email showed various pictures, some of which displayed nudity and simulated sex acts. Ms. Menadue's remaining emails were communications with coworkers and people outside of work. They were sharing funny pictures or just having personal conversations.

The employer allows limited use of the internet for personal communication. The employer's computer personnel indicated that Ms. Menadue had hundreds of personal emails on the work computer. At the time of separation, she acknowledged that she had previously been warned about her internet usage. She also acknowledged that she knew her internet usage was contrary to the employer's standards. As a result of the employer's discovery during the email review, Ms. Menadue was discharged on July 16, 2008. The above matter was the sole reason for the discharge.

Ms. Menadue filed an additional claim for job insurance benefits effective July 20, 2008. She has received a total of \$1,755.00 in job insurance benefits since filing the additional claim.

**REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment 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). Ms. Menadue was discharged because she violated the employer's internet usage policy. Given the number of personal emails discovered by the employer, the administrative law judge concludes that her usage exceeded the "limited" usage allowed by the employer. Moreover, the contents of some of the emails were inappropriate on a work computer. The pictures of the alligator's stomach contents were not clearly inappropriate. However, the pictures depicting nudity and simulated sex acts were clearly inappropriate.

Ms. Menadue had been warned about the quantity of emails she was sending. Given the state of the evidence, the administrative law judge cannot determine if the volume of emails continued or if she decreased the number of emails after the verbal warning. However, Ms. Menadue knew or should have known that sending emails containing nudity and sexual matters was contrary to the employer's expectations. For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has been established by the evidence.

Ms. Menadue has received job insurance benefits since filing her additional claim effective July 20, 2008. Based on the decision herein, the benefits received now constitute an overpayment. When an overpayment results from the reversal of a prior decision allowing benefits on a separation issue, the overpayment may be waived under certain circumstances. The overpayment may be waived if the claimant did not make any fraudulent statements during the fact-finding interview that resulted in the award of benefits and the employer failed to participate in the fact-finding interview. This matter shall be remanded to Claims to determine if Ms. Menadue will be required to repay benefits.

**DECISION:**

The representative's decision dated August 15, 2008, reference 04, is hereby reversed. Ms. Menadue was discharged for misconduct in connection with her employment. Benefits are

withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. This matter is remanded to Claims to determine if Ms. Menadue will be required to repay benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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