

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUSTIN M JOHNSON
Claimant

APPEAL NO: 11A-UI-16585-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROCK ISLAND AUCTION CO
Employer

OC: 11/13/11
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant appealed a department decision dated December 21, 2011, reference 02, that held he was discharged for misconduct on November 14, 2011, and which denied benefits. A telephone hearing was held on January 30, 2012. The claimant did not participate. Judy Boss, vice president, participated for the employer.

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 witness and having considered the evidence in the record, finds: The claimant began employment as a full-time graphic design artist on July 5, 2011, and last worked for the employer on November 14. He received the employer's policy that prohibited personal use of the employer's computer for internet access and personal e-mail.

He was verbally counseled about excessive personal use of his computer for internet and e-mail. He was told that this continued practice could lead to termination. He was discharged on November 14 for accessing non-work related websites and personal e-mail use, supplemented by a poor work performance.

Claimant failed to respond to the hearing notice.

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 established that the claimant was discharged for misconduct in connection with employment on November 14, 2011, for repeated violation of company policy.

The claimant knew the employer's policy due to a prior warning and his repeated violation for the same offense constitutes job-disqualifying misconduct.

DECISION:

The department decision dated December 21, 2011, reference 02, is affirmed. The claimant was discharged for misconduct on November 14, 2011. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw