

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDOLPH A WATERMAN
Claimant

APPEAL NO: 06A-UI-09854-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIoux COUNTY
Employer

**OC: 09/10/06 R: 01
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Sioux County (employer) appealed a representative's October 4, 2006 decision (reference 01) that concluded Randolph A. Waterman (claimant) was qualified to receive unemployment insurance benefits, and 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 October 24, 2006. Although the claimant was called for the hearing, he was not available to testify or participate in the hearing. Melissa O'Rourke, attorney for the employer represented the employer. Dan Altena, the sheriff, testified on the employer's behalf. A legal intern observed the hearing. 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.

ISSUE:

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 in August 1991. Since January 2005, the claimant has worked as the chief deputy for the employer. Altena became the claimant's supervisor in January 2005.

Before Altena began working as the sheriff in January 2005, he talked to a female employee and the claimant about their relationship at work. Both informed Altena they were friends and nothing more at that time. Before Altena promoted the claimant to the chief deputy position, he told the claimant he was seriously thinking about giving him this promotion. However, Altena wanted to reinforce the employer's code of conduct with the claimant before giving this promotion to the claimant. Prior to January 2005, Altena informed the claimant, that as the sheriff, he would not tolerate any sexual harassment or any personal or intimate relationship between the chief deputy and an employee.

After the claimant became the chief deputy, Altena had no concerns about the claimant's employment until August 23, 2006. On August 23, 2006, Altena and the above-mentioned female attended the same conference. When Altena noticed there appeared to be something bothering the employee, he asked if anything was wrong. The female then reported that the claimant's conduct at work offended her and she considered him to be sexually harassing her. As a result of this report, Altena ordered the claimant to be placed on administrative leave. Altena also authorized his employees to have the claimant's computer examined.

As a result of examining the claimant's computer, the employer found numerous inappropriate websites the claimant had visited and/or downloaded pictures from. The employer also discovered the claimant had received and sent inappropriate and offensive pictures. The employer's Internet policy prohibits employees from using the employer's computers for inappropriate use.

The employer concluded the claimant violated the employer's sexual harassment and Internet policies. The employer discharged the claimant on September 6, 2006.

The claimant established a claim for unemployment insurance benefits during the week of September 10, 2006. The claimant filed a claim for the week ending September 16, 2006. The claimant received a total of \$334.00 in benefits for this week.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if the 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).

The facts establish the claimant knew or should have known about the employer's sexual harassment and Internet policies. The evidence indicates the claimant knowingly and intentionally violated these policies. The claimant's conduct amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from the claimant. The employer discharged the claimant for reasons amounting to work-connected misconduct. As of September 10, 2006, 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. Based on the decision in this case, the claimant is not legally entitled to receive benefits for the week ending September 16, 2006. The claimant has been overpaid \$334.00 in benefits he received for this week.

DECISION:

The representative's October 4, 2006 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of September 10, 2006. This disqualification continued 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 is not legally entitled to receive benefits for the weeks ending September 16, 2006. The claimant has been overpaid and must repay a total of \$334.00 in benefits he received for this week.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/cs