

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUDY M BITTER
Claimant

APPEAL NO. 13A-UI-03371-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE STAFFING CENTER INC
Employer

OC: 02/24/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 15, 2013 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on April 23, 2013. Claimant participated. Employer participated through company president Tim Dieter. Claimant's Exhibit A was received.

ISSUE:

Was the claimant discharged for disqualifying job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was hired in October 2011 as a part-time business development clerk. She became licensed in April 2012 and started as a full-time salaried sales and customer service person on May 1, 2012. She was separated from employment on February 25, 2013. On February 21 Dieter found documents on her computer while she was at lunch and confronted her about applying for work with a competitor and updating her resume during company time and using a company computer and other company resources. When he asked her if she was looking for employment elsewhere she admitted she had been but said he owed her hours for time worked anyway. She had not asked his permission to use compensation time or business equipment or other resources, such as e-mail, to do so. Another employee, business development manager Anna George is permitted to use work time and equipment in her role to promote the business on social media. Dieter was not aware of former employee Carla Holt's personal use of company time or equipment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 employer has presented substantial and credible evidence that claimant used company time, equipment and resources without permission to search for work with a competitor. This is against the best interests of the employer, and is considered a theft of time, equipment and resources. Claimant's conduct rises to the level of disqualifying misconduct. Benefits are denied.

DECISION:

The March 15, 2013 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs

NOTE TO EMPLOYER:

If you wish to change your suite number of record, please access your account at:
<https://www.myiowaui.org/UITIPTaxWeb/>.
Helpful information about using this site may be found at:
<http://www.iowaworkforce.org/ui/uiemployers.htm> and
<http://www.youtube.com/watch?v= mpCM8FGQoY>