

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTI L VERMAZEN
Claimant

APPEAL NO. 12A-UI-13448-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INC
Employer

OC: 10/07/12
Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Manpower, filed an appeal from a decision dated November 6, 2012, reference 01. The decision allowed benefits to the claimant, Kristi Vermazen. After due notice was issued, a hearing was held by telephone conference call on December 13, 2012. The claimant participated on her own behalf. The employer participated by Senior Staffing Specialist Celeste Reilly.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Kristi Vermazen was employed by Manpower from July 24, 2012 until September 7, 2012. She was assigned to a client company Boehinger-Ingelheim (BI). The agency's policies include a prohibition against using the client's information technology system for personal use of any kind.

On September 7, 2012, the claimant was typing a text document to herself to "vent" some of her frustration about the job. When her next job order came in she "cut" the text and proceeded to input the work order. By accident the text she believed she had "cut" ended upon the work order and was sent by e-mail to an entire department. The text basically complained about BI being "picky" and stated "I had no idea this shit was soo complex."

Human Resources Director Allison O'Brien was notified of the e-mail and ordered Ms. Vermazen to leave immediately. Manpower was then notified of the situation and informed the claimant she was also discharged from the agency.

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 claimant made an error in judgment by "venting" to herself on her work computer. This text was never meant to be sent to anyone inside or outside the client company. Her attempt to delete it was unsuccessful. This is one of the main reasons employees should avoid using company computers for personal use.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The administrative law judge cannot conclude this incident alone rises to the level of substantial, job-related misconduct sufficient to warrant a denial of unemployment benefits.

DECISION:

The representative's decision of November 6, 2012, reference 01, is affirmed. Kristi Vermazen is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css