

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**CINDY J POLSON
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STRONGHURST IL 61480**

**AMERICAN ORDNANCE LLC
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MIDDLETON IA 52638**

**Appeal Number: 04A-UI-08163-SWT
OC: 07/04/04 R: 04
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 21, 2004, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 19, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Ron Johnson. Lynn Humphreys participated in the hearing on behalf of the employer with witnesses, Jack Dutton and Tom Rudy. Exhibits One and Two were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a radiography supervisor from August 14, 1986, to July 1, 2004. The claimant was informed and understood that under the employer's work rules, disclosure of information to an outside company or individual was considered a conflict of interest and extensive personal use of e-mail was considered inappropriate. The rules allowed occasional short personal e-mails to be sent from an employee's work computer.

The employer had a business venture with Champion Ignition Products to x-ray sparkplug components for defects. Prior to retiring from the employer in November 2003, Ron Johnson, an employee in the radiology department, had learned from the plant manager that the employer was planning to discontinue this business venture in the future. As a result, Johnson had openly discussed with management personnel the idea of opening his own x-ray business after he retired to take over the work performed by the employer for Champion Ignition. No one discouraged Johnson or told him it would be considered a conflict of interest.

Johnson and the claimant had worked together for the employer for a number of years. Johnson wanted the claimant to work with him in his business and shared his plans with her. He emphasized that the employer was wanting to discontinue the work for Champion Ignition Products. The claimant sent occasional short e-mails to Johnson on breaks and received short e-mails from Johnson on her work computer in which they talked about Johnson's idea and exchanged information about what it would take to open an x-ray operation.

In early June 8, 2004, the employer began an investigation into some x-ray mistakes. This led to an audit of the claimant's e-mail and the discovery of the e-mail correspondence between Johnson and the claimant from April 1 to June 15, 2004.

On July 1, 2004, the employer discharged the claimant for misuse of company resources and time for personal reasons and potentially taking current work away from the company.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 substantial and 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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. The claimant sent and received occasional short personal e-mails on her work computer during breaks from work. This is in compliance with the employer's e-mail usage policy. While it may have been imprudent to discuss an outside business venture with Johnson, in light of the fact that Johnson had been told that the employer was getting out of the business with Champion Ignition, there is no evidence of any willful and substantial wrongdoing by the claimant or any disclosure of confidential information.

DECISION:

The unemployment insurance decision dated July 21, 2004, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/pjs