

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERA R PRIES
Claimant

APPEAL NO. 10A-UI-07891-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COVENANT MEDICAL CENTER
Employer

OC: 04/25/10
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Tera Pries, filed an appeal from a decision dated May 28, 2010, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 15, 2010. The claimant participated on her own behalf. The employer, Covenant Medical Center (CMC), participated by Human Resources Director Missy Santman.

ISSUE:

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

FINDINGS OF FACT:

Tera Pries was employed by CMC from September 18, 2006 until April 28, 2010 as a full-time operating room secretary. The employer has an internet usage policy which the claimant had received. In addition there was a training session which dealt with this policy in November 2009. The policy prohibits the use of company equipment and internet for personal use while on the clock, and no social network, shopping or sexually oriented websites.

Ms. Pries received a final written warning January 14, 2010, for violation of the internet policy. It advised her that her job was in jeopardy. On March 26, 2010, an offensive and sexually oriented e-mail from the claimant was printed out by accident in another department. The employee who found it considered it offensive and took it to her manager who referred it to Human Resources Director Missy Santman. She spoke with Patient Care Manager Matt Cooper, the claimant's supervisor. He informed human resources and the IT department was contacted to do a history of the claimant's internet usage.

The report was finished and it was found she accessed her personal hot mail account during work hours, including on April 16, 2010, for 38 minutes, the same day she logged 1.25 hours of overtime. She visited the Iowa Court site to check on payment of her child support, and You Tube. The investigation concluded and Mr. Cooper and Ms. Santman met with Ms. Pries on April 28, 2010.

She was presented with the IT report and acknowledged the use of the company computers for personal use during business hours. The printing out of the joke which started the investigation was a mistake as she had only been forwarding the e-mail to friends. Her explanation was that she did not feel her work had suffered as a result of her usage of the internet but acknowledged it was a violation of the policy nonetheless.

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 had been advised her job was in jeopardy as a result of her violation of the employer's internet policy. In spite of that warning she continued to violate the policy, apparently justifying it by the conclusion her work did not suffer. That is not the only reason for such a policy, as demonstrated by the error which resulted in the e-mail joke she forwarded being printed out elsewhere and giving offense. Such material does not need to be seen as originating from a company computer.

Ms. Pries blatantly ignored not only the policy but a final written warning on this subject. It constitutes insubordination. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of May 28, 2010, reference 01, is affirmed. Tera Pries is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css