

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOLORES M KNIGHT
Claimant

APPEAL NO. 10A-UI-05403-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

**Original Claim: 03/07/10
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The employer appealed a department decision dated April 5, 2010, reference 01, that held the claimant was not discharged for misconduct on March 11, 2010, and that allowed benefits. A telephone hearing was held on May 27, 2010. The claimant participated. Mary Eggenburg, Benefits Specialist; Kate Seemuth, Nurse Manager; and Kimberly Chamberlain, Senior Associate Director, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment on April 20, 2008, and last worked for the employer as a full-time clerk on March 11, 2010. The employer issued the claimant a disciplinary warning in December 2009 for violating its break policy.

The claimant's fiancé divorced her co-worker, Deb Jensen, and there have been some ongoing acrimony involving the parties outside the workplace, which eventually became an issue at work. The claimant learned that co-worker Jensen had been disseminating some intimate photos of herself and her fiancé to employees. The claimant had complained to local law enforcement about Jensen's harassment, but no action had been taken.

On February 7, the claimant created an e-mail account using the name Christian Peters, and sent an e-mail to Jensen's supervisor showing the intimate photos in an effort to stop this conduct. The employer conducted an investigation, and security identified the claimant as the sender. The employer had a meeting with the claimant on March 8 and she admitted sending the e-mail using the fictitious name to hide her identity. The employer placed the claimant on administrative leave. The employer discharged the claimant on March 11, 2010 for making false/malicious statements against a co-worker, creating a hostile work environment, and committing sexual harassment or abuse.

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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on March 11, 2010.

The employer failed to offer the December 2009 warning as evidence, which the claimant states was a violation of the employer's break policy and that it had nothing to do with the conduct for which she was discharged. The employer did not offer the February 7 e-mail as evidence, but presumably read "all" of it into the record. The claimant accuses co-worker Jensen of disseminating intimate photos of herself and her fiancé (former husband) to co-workers, which is not false or malicious if true. While the claimant demonstrated poor judgment by sending the e-mail under a fictitious name, she submitted it to her co-worker's supervisor to put the employer on notice there might be a domestic issue spilling over into the workplace that should be reviewed.

Whether the claimant inappropriately used an anonymous e-mail or properly used an employer compliance hotline to communicate a serious issue involving a co-worker is not the issue. The issue is whether the claimant intentionally violated any employer policy by sending the e-mail, and whether its content violates that policy. The e-mail was not sent to the co-worker, but a supervisor to whom the claimant had an expectation would conduct a private, internal

investigation, and, hopefully, stop any such further conduct. The claimant's actions do not constitute job-disqualifying misconduct.

DECISION:

The department decision dated April 5, 2010 reference 01, is affirmed. The claimant was not discharged for misconduct on March 11, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw