

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN BENDICKSON
Claimant

APPEAL NO: 11A-UI-12037-B

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORTH IOWA AREA COMM COLLEGE
Employer

**OC: 07/31/11
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Steven Bendickson (claimant) appealed an unemployment insurance decision dated September 6, 2011, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from North Iowa Area Community College (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Mason City, Iowa on October 25, 2011. The claimant participated in the hearing. The employer participated through Shelly Schmit, Vice-President of Organizational Development and Human Resources and Mark Greenwood, Associate CIO. Employer's Exhibits One through Four were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time computer technician from August 20, 1997 through July 29, 2011 when he was discharged for violating the employer's computer usage policy and the sexual harassment policy by viewing sexually explicit photos on his work computer. The claimant had received a previous written warning on June 26, 2006 for the same conduct when he was using his work computer to access offensive web sites during working hours. The employer allows its employees to access non-related work sites during their breaks and lunch time, provided the web sites are not offensive.

On July 20, 2011 a co-worker saw the claimant's computer monitor had sexually explicit photos on it. The co-worker used his cell phone to take a picture of the claimant's computer screen. The web site was listed as "Wives and Milf" and had seven sexually explicit photos of women on the screen. The employer looked up "Milf" and it stands for "mothers I'd like to fuck." The

employer began an investigation and learned that the claimant was viewing his yahoo email account and opened this particular email when he left his desk.

The investigation also showed that the claimant was spending a great amount of work time accessing his personal email and web dating sites. The employer found 128 non-work-related web sites that the claimant had visited from July 20, 2011 through July 22, 2011. The employer was unable to determine what some of these sites were and the claimant denied knowing anything about these sites. On July 21, 2011 he visited www.plentyoffish.com 23 different times. On July 21, 2011 the claimant visited a web site which only consisted of the following numbers: 68.142.200.12. He went to that web site 25 times on July 21 and one time on July 22, 2011.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 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 claimant was discharged on July 29, 2011 for abuse of the employer's computer and for viewing sexually explicit pictures on that computer during work hours. He denies all wrongdoing and testified that he never solicited the "wives and milf" email but was opening his personal emails and deleting them after he opened them. He took issue with the co-employee going back behind his desk to even see his computer screen. His explanations and claims of ignorance are not credible, particularly since he is a computer expert. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated September 6, 2011, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs