

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CARRIE L RICHMOND**  
Claimant

**APPEAL NO. 09A-UI-11618-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SYNOVATE INC**  
Employer

**OC: 05/17/09**  
**Claimant: Appellant (2)**

Section 96.5-1-a – Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated August 7, 2009, reference 03, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 27, 2009. Claimant participated. Employer participated by Tina Hernandez, interim facility director—Ottumwa, Iowa facility, and quality control manager for North America. The employer was represented by Peggy Abrams, hearing representative. The record consists of the testimony of Tina Hernandez; the testimony of Carrie Richmond; and Employer's Exhibits 1-6.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case is a research company that does opinion and consumer satisfaction surveys. The claimant worked as an administrative assistant. She was terminated on July 9, 2009.

The claimant's termination was based on events that had occurred the previous day. Tina Hernandez had asked a member of the staff to do some testing of employees for possible internal promotion. One of the persons tested was an individual named Kimmie. Kimmie was the daughter of one of the supervisors—Crystal. The person doing the testing heard a negative comment about Kimmie and she passed that information along to the claimant. The employer believed that the claimant then told Crystal, which in turn upset Crystal and the rest of the staff. The claimant denied passing on the negative statement about Kimmie to Crystal. The claimant was terminated, however, based on violation of the employer's confidentiality policy and the repercussions among the staff because of the comment.

## 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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there is a material breach of the worker's duty to the employer. The definition of misconduct excludes good faith errors in judgment or discretion. The employer has the burden of proof to show misconduct.

After carefully considering the evidence in this case, the administrative law judge concludes that the employer has not shown misconduct. The crucial piece of evidence in this case is an email that the claimant allegedly sent to Monica Harter, the previous human resources manager. (Exhibit 1) The email shows that it is from Kelly Neal to Monica Harter but it is signed Carrie Lynn Richmond. That email would confirm that the claimant did in fact pass on the comment about Kimmie to Crystal. The claimant however denies sending that email and adds that she would not have had access to Kelly's computer to even send the email. Kelly Neal and Monica Hartley did not testify at the hearing. Crystal did not testify at the hearing and thus the source of her information about the negative comment on her daughter is unknown.

Findings must be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs. Iowa Code section 17A.14(1).. Because of the nature of the evidence produced at hearing, the employer is unable to show

misconduct. The employer's evidence in this case is largely hearsay as Ms. Hernandez did not hear the claimant pass along the comment and relied on what others told her and the email. Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

In this case, there was no direct evidence that the claimant passed along confidential information. She denied doing so. Since the employer has failed to show misconduct, benefits will be allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated August 7, 2009, reference 03, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs