

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RONALD K STAFFORD**  
Claimant

**APPEAL NO: 12A-UI-13603-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA DEPT OF TRANSPORTATION**  
Employer

**OC: 10/21/12**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge  
Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

Ronald K. Stafford (claimant) appealed a representative's November 9, 2012 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with the Iowa Department of Transportation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 8, 2013. The claimant participated in the hearing and was represented by Matthew Sease. Debra Campbell of Employer's Edge appeared on the employer's behalf and presented testimony from two witnesses, Dana McKenna and Justin Sencer. During the hearing, Employer's Exhibits One through Six and Claimant's Exhibits A through D were entered 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:**

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on December 16, 1983. Since about 2003 he worked full time as a bridge inspector. His last day of work was September 24, 2012. He was suspended on that date. On October 22, 2012 the claimant was given the option to either quit or be discharged; he chose to quit.

The reason the employer would have discharged him had he not resigned was that the employer concluded that the claimant had violated the employer's authorized computer use policy by transmitting emails containing nude images. The employer had begun an investigation involving other employees, and in the course of that investigation on September 21 was able to trace emails back to the claimant. Further investigation indicated that the claimant had transmitted nude images in emails on six occasions between June 21 and July 16. The employer has general policies prohibiting or limiting general non-work related computer usage,

but has specific policies prohibiting computer usage to “send . . . view . . . or otherwise disseminate material involving or relating to . . . obscenity, pornography . . . [or] sexually oriented.” The claimant was on notice of these policies.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993). The claimant did not have the intent to sever the employment relationship necessary to treat the separation as a "voluntary quit" for unemployment insurance purposes; he did not have the option to continue his employment; he could either quit or be discharged. 871 IAC 24.26(21). As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992).

The next issue in this case is then whether the employer effectively discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). 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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's sending of emails containing nudity on the employer's computer system 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. The employer effectively discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's November 9, 2012 decision (reference 01) is affirmed. The claimant did not voluntarily quit but the employer effectively discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of October 22, 2012. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. ]

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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