IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KATHY M CARSTENS
Claimant

XENIA RURAL WATER DISTRICT
Employer

APPEAL NO. 09A-UI-04708-CT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/22/09
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct
Section 96.6(2) – Timeliness of Appeals

STATEMENT OF THE CASE:

Kathy Carstens filed an appeal from a representative's decision dated March 12, 2009, reference 01, which denied benefits based on her separation from Xenia Rural Wafer District. After due notice was issued, a hearing was held by telephone on April 21, 2009. Ms. Carstens participated personally. The employer participated by Tammy Parks, Human Resources Director. Exhibits One through Five were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Carstens was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: The representative's decision that is the subject of this appeal was mailed to Ms. Carstens at her address of record, a post office box, on March 12, 2009. She checks for mail on a daily basis and did not receive the disqualifying decision until March 24, 2009. She filed her appeal the same day.

Ms. Carstens was employed by Xenia Rural Water District from July 21, 2008 until February 20, 2009. She worked full time in accounts payable. She was discharged for excessive and inappropriate use of the email system. The employer's policies do not prohibit use of the work computer for personal use. The use must be "incidental, infrequent and non-disruptive." The policy prohibits using the computer to transmit material that violates sexual harassment or hostile workplace laws.

Ms. Carstens' supervisor noted her sending emails on work time and requested a review of her emails and instant messaging. It was reported that approximately 60 percent of her emails and 90 percent of her instant messages were not work-related. After the audit, the employer met with her on January 9, 2009 and issued a verbal warning. She was told she was not to use the work equipment and time for personal emails and messages. Since most of the

communications were between Ms. Carstens and her sister, she was to tell her sister not to communicate with her at work.

The decision to discharge was based on the fact that Ms. Carstens was again using the work computer for personal emails. The employer discovered emails from February 19 and 20. At least one was an extended exchange concerning dinner plans with her sister, Annie Shirbroun, on February 19. There were also photos that contained some degree of nudity. There were also photos and references that were disparaging of African-Americans. Some of the items were forwarded by Ms. Carstens to other individuals. As a result of her violation of the January 9 directive, Ms. Carstens was discharged on February 20, 2009.

REASONING AND CONCLUSIONS OF LAW:

Ms. Carstens had ten days in which to file an appeal from the March 12, 2009 decision that disqualified her from receiving benefits. Iowa Code section 96.6(2). She did not receive the decision until March 24, after the ten-day deadline had passed. She acted with due dispatch in filing an appeal on the same day she received the decision. It is concluded, therefore, that her appeal should be deemed timely filed. As such, there is jurisdiction over the separation issue.

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. Ms. Carstens was discharged because she continued to use the work computer for personal emails after being told not to. It is clear from the emails (Exhibit Four) that they were not all sent during times that might reasonably be considered break times. The extended exchange with her sister covered a period of over two hours, longer than any break she might have been entitled to take. For the above reasons, it is concluded that some of her usage occurred during times she was expected to be performing services for the employer.

Some of the emails at issue were potentially offensive to African-Americans and could be seen as creating a hostile work environment. The employer had the right to expect that such materials would not appear on the work computer. The administrative law judge appreciates that Ms. Carstens may not have had control over what others emailed to her. However, she did have control over whether she opened or deleted without opening emails she knew were not work-related. She also had control over whether to forward the materials on to others. Furthermore, she certainly had control over whether she engaged in an extended exchange with her sister on February 19. It is clear from that communication that she was making no attempt to stop her sister from continuing to email her at work.

Ms. Carstens was on notice that she was not to engage in personal use of the computer. The fact that she continued to send emails, some of which were offensive, during work time constituted a substantial disregard of the standards she knew the employer expected of her. For the reasons cited herein, it is concluded that disqualifying misconduct has been established and benefits are denied.

DECISION:

The representative's decision dated March 12, 2009, reference 01, is hereby affirmed. Ms. Carstens was discharged for misconduct in connection with her employment. Benefits are

withheld until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible.

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Carolyn F. Coleman
Administrative Law Judge

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Decision Dated and Mailed

cfc/css