

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRENDA K KIEL**  
Claimant

**APPEAL NO. 100-UI-07149-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ILLINOIS CASUALTY**  
Employer

**OC: 01/18/09**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated December 18, 2009, reference 02, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on July 7, 2010. Proper notice of the hearing was given to the parties. The claimant participated in the hearing. Kathy Springer participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full-time for the employer as a claimant's assistant from June 1 to December 4, 2009.

In October 2009, the claimant was working on her computer and was checking the various folders that resided on her computer's desktop for information that might be relevant to her job. She opened a folder on the desktop called ICC (which are the company initials), which contained department subfolders, including a folder for the human resources department. She assumed the folder contained human resources-related documents for employees to access. Within the file, she found a document with pay scales listing positions and pay ranges. It did not identify any employees. The folder actually should have been password-protected folder and not accessible to all employees, but it mistakenly was not secure. The claimant had no knowledge that the folder contained confidential information or that she was not supposed to access the file. The claimant did not share the information about the file or its contents with anyone at that time.

On December 1, the claimant was talking to a coworker about her upcoming review and potential raise. The coworker volunteered he was happy with the raise he received after his review. The claimant mentioned the pay scale document and offered to show him where it was. They were at the coworker's computer and he opened a folder that had a scanned 2007 paystub for an employee who no longer worked for the company and a 2007 letter offering

employment to another employee. They were surprised this information was available on the computer and stopped. The claimant never opened the human resources department's folder again or mentioned anything to anyone else about the folder.

A short time later, the coworker shared the information about human resources folder with two other employees. Another employee ended up learning the unsecured folder and reported it to management. The employer discharged the claimant on December 4, 2009, for accessing and disclosing confidential information and for not reporting the breach of security to management.

The claimant had filed a new claim for unemployment insurance benefits with an effective date of January 18, 2009, before she ever started working for the employer. She filed an additional claim for unemployment insurance benefits on December 4, 2009. The claimant was employed in Illinois. The employer is not a base period employer on the claim.

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

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. No willful and substantial misconduct has been proven in this case. The claimant accessed a non-secured folder on her computer and reasonably believed the folder and pay scale document was not confidential. She informed her coworker about the folder and file, which would not be willful and substantial misconduct based on this reasonable belief. She did not see any current payroll information and never accessed the folder or mentioned the folder to anyone else afterward. In hindsight, it would have been prudent for her to have told a manager that there might be something the employer would want to look into, but at most this would be a good-faith error in judgment, not disqualifying misconduct.

The employer's account is not presently chargeable for benefits paid to the claimant, since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, charges will be decided by the state of Illinois, where the work was performed and the wages were reported.

**DECISION:**

The unemployment insurance decision dated December 18, 2009, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw