

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CANDACE ROUTSON
Claimant

APPEAL NO: 07A-UI-00410-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHURING & UITERMARKT PC
Employer

**OC: 11/26/06 R: 02
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Candace Routson (claimant) appealed an unemployment insurance decision dated January 2, 2007, reference 02, which held that she was not eligible for unemployment insurance benefits because she was discharged from Schuring & Uitermarkt PC (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 29, 2007. The claimant participated in the hearing. The employer participated through Dale McCleish. 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 employer discharged the claimant for work-related misconduct?

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 bookkeeper in this accounting firm from September 2005 through November 10, 2006 when she was discharged. The employer's computer policy prohibits using the computer for anything but work. There was a question about how the claimant was spending her time and on November 10, 2006, the employer checked the claimant's computer and in the last four days, she sent and/or received 123 personal emails. Her time came into question when a client on whose account the claimant was working, complained about its excessive bill. When the time was compared to the amount of work that was done, it was not consistent. The client eventually withdrew its business and started doing their accounting in-house. The employer testified the claimant spent 68.5 hours on this account in October 2006 but the client had taken away its business at that point and there was only minimal work that needed to be finished. The employer had previously sent the claimant emails questioning her about the time she was claiming on this client but she explained only that it took her that long to do the work. She was discharged after it was determined she was spending her time on personal emails instead of performing work.

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 section 96.5-2-a.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 for time theft. She was claiming she had performed work for a client but only minimal work was done and she was actually spending her time using the employer's computer for her personal emails. The claimant denies any wrongdoing but her testimony was not found reliable. She initially testified that she received a lot of "forwards" since she had given out her email but claimed that she simply deleted those emails instead of reading them. The claimant then changed her testimony and claimed it was not 'forwards' but junk emails or advertisements that she received after she purchased something on-line. This latter claim is simply not reasonable. The employer's

testimony, that its computer system has filters so no junk emails get through to the work computers, further weakens the claimant's credibility. The claimant's theft of time was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. 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 January 2, 2007, reference 02, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs