

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNI J MCANINCH**  
Claimant

**APPEAL NO. 11A-UI-07925-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EMPLOYERS MUTUAL CASUALTY CO**  
Employer

**OC: 05/15/11  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Jenni McAninch filed an appeal from a representative's decision dated June 8, 2011, reference 01, which denied benefits based on her separation from Employers Mutual Casualty Company (EMC). After due notice was issued, a hearing was held by telephone on July 13, 2011. Ms. McAninch participated personally. The employer participated by Jean Bloomberg, President/CEO; Nancy Heuer, Senior Claims Supervisor; Pauline DeVries, Office Manager; and Julie Davis, Claims Support Associate. The employer was represented by Lori Magerko, Attorney at Law. Exhibits One through Four were admitted on the employer's behalf.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. McAninch was employed by EMC from September 14, 2009 until May 18, 2011. She worked full time as a claims support associate. She was discharged for violating the employer's policy regarding internet usage. Employees may access the internet for personal use before work, after work, and during the lunch period. Access during work time is limited to work-related uses.

On August 17, 2010, Ms. McAninch was given a written warning because she was using the internet during work time for personal reasons. It was estimated that she had spent several hours on personal usage over the preceding two months. She was told she was restricted to desk top access to the company's internet for business purposes only. This meant that Ms. McAninch could not access the internet for personal usage at any time, including before and after work or during lunch. The warning advised that she would be terminated without further warnings if she failed to comply with the terms of the warning.

The decision to discharge was based on the fact that Ms. McAninch again accessed the internet for personal use on Friday, May 13, 2011. She was observed at the desk of a coworker, Julie

Davis, using Ms. Davis' computer to access the web site for a telephone company. She was observed crouched near Ms. Davis' desk using the keyboard. Ms. McAninch did not comment when a supervisor came by and reminded her that she was not to use the computer for personal business. As a result of this incident, she was discharged the following Wednesday, May 18, 2011.

**REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code § 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. McAninch was discharged for violating the terms of the warning she received on August 17, 2010. She knew she was not to use the work computer for personal business at any time. The fact that she used a coworker's computer on May 13 establishes that she knew she was not allowed access from her own computer. The fact that she may have been on her lunch break on May 13 is irrelevant. The fact is that she was not allowed access for personal business at any time.

The employer had the right to expect that work time would be devoted to work-related activities. Time spent on personal business detracts from the amount of time that could be spent working. Moreover, the employer had the right to dictate the terms and conditions under which company equipment may be used. Ms. McAninch knew as of August 17, 2010, that her use of the company computer was restricted to work-related matters. Her conduct on May 13 constituted an intentional disregard of the standards she knew the employer expected of her. There was no emergency or other compelling reason for violating the policy on May 13.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that disqualifying misconduct has been established. Accordingly, benefits are denied.

**DECISION:**

The representative's decision dated June 8, 2011, reference 01, is hereby affirmed. Ms. McAninch was discharged by EMC for misconduct in connection with her employment. Benefits are denied 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/pjs