

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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NCS PEARSON INC
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Appeal Number: 04A-UI-02790-H2T
OC 07-13-03 R 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 4, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 5, 2004. The claimant did participate along with his witnesses Jennifer Williams, and Michelle Debacker. The employer did participate through Jill Hugunin, Senior Human Resources Representative. Employer's Exhibits One and Two were received into the record.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a scanner operator full time beginning April 15, 1998 through February 9, 2004 when he was discharged. The claimant printed out the photo depicted in

Employer's Exhibit One and Employers Exhibit Two on February 5, 2004 using company equipment. The claimant admits that he printed out the photo, which is a color picture of a bed made of wood. The four posts of the bed are large penises; the headboard and the footboard have woodcarvings of people engaged in sexual activity. The claimant admits that he printed off the picture for his own use but forgot to take it off the printer. Another employee found the picture on the printer and complained about it to her manager. The picture is clearly sexually oriented and can reasonably be found to be offensive by another employee. The claimant was terminated for exposing a coworker to pornographic material in violation of the employer's sexual harassment policy. The employer's sexual harassment policy and rules regarding use of company equipment were available to the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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's sexual harassment policy clearly prohibits the display of pornographic material to coworkers. The color photo is a pornographic image as it contains depictions of male genitals and a couple engaged in sexual activity. By printing off the picture and leaving for a coworker to find, the claimant exposed another coworker to pornographic material in contravention of the employer's policy. Although an isolated incident, the infraction is substantial enough to be considered misconduct sufficient to disqualify the claimant from receiving unemployment insurance benefits. Benefits are denied.

DECISION:

The March 4, 2004, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

tkh/kjf