

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAD R PETTIT
Claimant

APPEAL NO: 14A-UI-04480-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES INC
Employer

OC: 03/30/14
Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 21, 2014 determination (reference 02) that disqualified him from receiving benefits and held the employer's account subject to charge because he had been discharged for disqualifying reasons. The claimant participated at the June 2 hearing. Turkessa Newsone and Nicole McLean appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in March 2010. He worked as a full-time customer service representative.

During his employment, the claimant received written warnings from the employer about misusing the employer's email and social media policies. In late October or early November 2012, he received a final written warning for sending an email to other employees about a discrepancy or interpretation concerning overtime work and/or pay. In late November 2013, the claimant received a first and final written warning for making a derogatory remark on his Facebook page about the employer. The employer gave the 2012 warning for violating the employer's email policy and the 2013 warning for violating the employer's social media policy.

When employees worked in two buildings, the employer allowed employees to use instant messaging. After the employer had all employees working in one building, the employer no longer allowed employees to use instant messaging as they had before. This occurred late 2013.

In the claimant's job, he had access to and could use instant messaging. In late March 2014, software was being updated on his computer. The IT technician gave the claimant a link to Spark, the employer's Instant Messaging program. The claimant sent a mass email to other customer service representatives and gave them the link to Spark. The claimant used a distribution list he typically used. One of the customer service representatives, who received the claimant's email, forwarded the claimant's email to McLean.

The employer policy informs employees they are not supposed to email other customer service representatives. The claimant could send emails, but not to other employees.

After the employer learned the claimant had sent a mass email to other employees, the employer discharged him on March 26 for misuse of the employer's email. The employer concluded it was not only a violation of the employer's policy, but it was not the claimant's place to send a link to instant messaging to other employees. The claimant did not contact McLean, his supervisor to find out if he could send the link to other employees. The claimant did not have much contact with McLean.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

In October or November 2012, the claimant received a final warning for sending a mass email to co-workers. When the employer gave him this warning, the claimant knew or should have known he did not have the authority to send mass emails to other customer service representatives. If he used a distribution list between late 2012 and in March 2014, McLean did not know he was sending emails to co-workers until March 26, 2014. Even though the claimant had software on his computer to send instant messages, other employees did not. Also, the employer told employees in late 2013 that the employer no longer allowed employees to send instant messages to one another. The claimant did not have the authority to send a link to other customer service representatives to access an instant messaging program. The claimant's decision to send a mass email to co-workers about an instant messaging program that was no longer to be used amounts to an intentional and substantial disregard of the employer's interests. The claimant misused and violated the employer's email policy. As of March 30, 2014, the claimant is not qualified to receive benefits.

DECISION:

The representative's April 21, 2014 determination (reference 02) is affirmed. The employer discharged the claimant for violating the employment's policy. The claimant committed work-connected misconduct. As of March 30, 2014, the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/can