

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRIS D DELFOSSE
Claimant

APPEAL NO. 09A-UI-07260-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADECCO USA INC
Employer

**Original Claim: 03/29/09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated May 7, 2009, reference 01, which denied benefits based upon his separation from Adecco USA, Inc. After due notice, a telephone hearing was scheduled for and held on June 4, 2009. The claimant participated personally. The employer participated by Lisa Harroff, hearing representative, and witness Jack Shappee, branch manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record finds: The claimant was employed as a staffing consultant for Adecco USA from March 4, 2007 until March 30, 2009, when he was discharged for violation of the company's internet policy. Mr. Delfosse was employed on a full-time basis and was paid by salary. His immediate supervisor was Jack Shappee.

The claimant was discharged after a review of the claimant's internet usage showed repetitive access to websites with sexually explicit materials, in violation of company policy. Employees are informed at the time of hire and are reminded periodically of the company's internet usage policy, which prohibits access or display of images that are sexual in nature. Mr. Delfosse received a copy of the company handbook and acknowledged his receipt. The claimant had not been previously warned, as the company was unaware of the extensive nature of his violation of company policy. Violation of the company policy subjects employees to discharge.

When confronted with the basis for his termination from employment, Mr. Delfosse could not dispute nor deny the allegations.

It is the claimant's position that his immediate supervisor, Mr. Shappee, had access to the claimant's confidential password. The claimant denies any and all violation of company policy.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is.

The evidence in this case is disputed. The administrative law judge, having heard the testimony of the witnesses and having considered the matter, concludes that the employer has sustained its burden of proof in establishing the claimant's discharge took place under disqualifying conditions. The evidence in the record establishes that the company has a policy in place that prohibits unauthorized use of company electronic equipment and specifically prohibits accessing or displaying imagery of a sexual nature. The claimant was aware of the policy and had acknowledged its receipt. Employees were also reminded of the policy on a periodic basis. The claimant was discharged when a review of the claimant's computer activities showed repeated access to websites containing explicit sexual materials. The access took place while utilizing company equipment during working hours. The claimant did not receive a previous warning, because the company was unaware that the claimant was violating the policy and was unaware of the extent of its violation by the claimant.

Although cognizant that the claimant maintains that he did not violate the policy and that the security of his computer was compromised by Mr. Shappee having access to the claimant's password, the administrative law judge finds this testimony to strain credibility. The administrative law judge notes that at the time the claimant was discharged, he did not deny or dispute the basis for his discharge, nor did the claimant indicate that his confidential password had been compromised. It is also noted that access to the prohibited websites took place when the claimant was working and interwoven with other duties that Mr. Delfosse was performing on the computer that were related to his job position. Based upon the totality of the evidence in the record, the administrative law judge concludes that the employer has sustained its burden of proof of disqualifying conduct by the preponderance of the evidence.

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.

DECISION:

Representative's decision dated May 7, 2009, reference 01, is affirmed. The claimant is disqualified and benefits are withheld until he has worked in and earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

srs/kjw