

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JASON W GREGORY**  
Claimant

**APPEAL NO. 07A-UI-07463-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QWEST CORPORATION**  
Employer

**OC: 07/08/07 R: 02**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Jason Gregory filed an appeal from a representative's decision dated August 2, 2007, reference 01, which denied benefits based upon his separation from Qwest Corporation. After due notice was issued, a hearing was held by telephone on August 20, 2007. Mr. Gregory participated personally. Participating on his behalf Mark Rocha, President CWA Local 1702. The employer participated by Steven Zaks, hearing representative, and witnesses Marlys Jones and Barbara Pilcher. Exhibits One through Seventeen were received into evidence.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from July 10, 2000, until July 11, 2007, when he was discharged from employment for violation of company policy. Mr. Gregory held the position of customer communications technician and was employed on a full-time basis. His immediate supervisor was Barbara Pilcher.

The claimant was discharged following a company investigation regarding the allegation of a former employee stating that the claimant harassed him via Qwest e-mail. The allegation was received by the company from Quincy Hines on June 4, 2007, and the company began to investigate. When interviewed by the director of network operations, Mr. Gregory admitted that he had used Qwest e-mail systems for personal purposes, including a number of personal e-mails to Mr. Hines through March of 2007. Because the claimant had received warnings from the company on May 2, 2006; July 28, 2006; and September 22, 2006; as well as February 14, 2007, regarding personal use of company equipment, e-mail, and internet, a decision was made to terminate Mr. Gregory from his employment. The claimant had been warned on each occasion that failure to abide by the company's systems for personal use could result in disciplinary action including his termination from employment. During the warnings, the

claimant was accompanied by a union representative. Although aware of the contents of the warning, the claimant declined to sign the warnings.

During a final investigative meeting that took place July 9, 2007, Mr. Gregory was told of the allegations that had been made to the company by Mr. Hines. The claimant admitted to using Qwest e-mail systems for personal use, including personal and potentially inappropriate e-mails to Mr. Hines in March of 2007. The claimant was accompanied by a union representative at the final investigative meeting, as well as at the time of discharge. At the time of discharge, the claimant again did not dispute the basis for the employer's decision to terminate him.

It is the claimant's position that the evidence brought forth by the employer was, in effect, manufactured for the purpose of discharge. The claimant denies being adequately warned, and denies violating the company policy by sending Mr. Hines e-mails using company equipment, facilities, or time. It is the claimant's position that he did not dispute the basis for his termination at the time because he felt the company would weigh the factors and make a proper determination.

#### **REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes, based upon the evidence in the record, that the employer has sustained its burden of proof in establishing that the claimant's discharge took place under disqualifying conditions. The evidence establishes that Mr. Gregory was well aware of Qwest Corporation's electronic, e-mail, and internet policies, and that the claimant had been repeatedly warned for violations of the policy. The evidence also establishes that at the time of the final investigative meeting with Mr. Gregory on July 9, 2007, the claimant admitted to violating the company policy by sending personal and inappropriate e-mails to a third party in March 2007. The evidence establishes that the claimant had been warned by the company on a number of occasions prior to March 2007 with regard to the company policy and the employer's expectations. The company acted in a timely manner to investigate and discharge after being made aware of the allegations.

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.

For the reasons stated herein, the administrative law judge finds that the claimant was discharged for misconduct in connection with his work. Although aware that Mr. Gregory now testifies that he did not consider his conduct to be a violation of company policy and that the evidence brought forth by the employer had been, in effect, manufactured, the administrative law judge finds the claimant's testimony strains credibility. Benefits are withheld.

**DECISION:**

The representative's decision dated August 2, 2007, reference 01, is hereby affirmed. The claimant was discharged for misconduct in connection with his work. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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