

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ROSEMARY J BRIMMER

Claimant

APPEAL NO. 15A-UI-04416-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BUCHANAN CO AGR EXTENSION DIST

Employer

OC: 03/15/15

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated April 7, 2015, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on June 3, 2015. Claimant participated. Participating on behalf of the claimant was Mr. John Guyer, Paralegal. The employer participated by Ms. Roxanne Fuller, Executive Director. Claimant's Exhibits 1 and 2 were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for intentional misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all the evidence in the record, the administrative law judge finds: Rosemary Brimmer was employed by the Buchanan County Agricultural Extension District from January 11, 2000 until March 10, 2015 when she was discharged from employment. Ms. Brimmer was initially hired as a part-time employee but began full-time employment on January 17, 2001. Ms. Brimmer was employed as an office assistant and was paid \$12.56 per hour. Her immediate supervisor was executive director, Roxanne Fuller.

Ms. Brimmer was discharged from her employment with the Agricultural Extension District when she continued to use county extension resources for her personal use and continued to perform personal business on county time in violation of numerous warnings and performance improvement plans that had been given to her during the course of her employment.

During the course of her employment, the claimant's immediate supervisor, Ms. Fuller, had extensively tried to work with Ms. Brimmer to retain Ms. Brimmer as a county employee. Ms. Brimmer often made mistakes in the performance of her duties and the claimant had been repeatedly advised to slow down and check her work to ensure that the work was completed accurately. In addition to ongoing performance issues, the subject of Ms. Brimmer's personal use of employer electronic equipment for her own purposes had been repeated subject of warning to Ms. Brimmer. Ms. Brimmer had been repeatedly observed playing games on county computers, working on personal business during work time and these issues had also been the subject of complaints made by taxpayers to the employer.

After being warned, the claimant would improve her accuracy and attention to detail for a period of time but would later revert to unacceptable work practices. The employer believed that the claimant's continued use of work time and employer resources for Ms. Brimmer's own personal use was causing her to have errors in her work and was portraying a negative image to customers who observed Ms. Brimmer using county equipment on work time for her own purposes. On January 17, 2015, the claimant was placed on a final performance improvement plan because of repeated mistakes due to inattention. When Ms. Brimmer continued to use company time and equipment for her own personal use in spite of previous warnings and the performance improvement plan, a decision was made to terminate Ms. Brimmer from her employment effective March 10, 2015.

It is the claimant's position that she worked to the best of her abilities and that her poor performance was due to lack of ability and not due to intentional misconduct.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In discharge cases the employer has the burden of proof to establish disqualifying conduct of the part of the claimant. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In the case at hand the claimant was discharged when she continued to make errors due to inattention to her work that was caused in part by the claimant playing games on company computers and using company computers and other equipment for her own personal use during work time. The evidence in the record establishes that the employer repeatedly attempted to work with Ms. Brimmer to assist her in improving her work performance, but Ms. Brimmer continued to violate the terms of previous warnings and performance improvement plans by doing other things at work, instead of devoting her attention to county business. The claimant's repeated use of electronic equipment for her own personal use had been the subject of complaints by taxpayers and continued although the claimant had been repeatedly warned.

The administrative law judge concludes that the claimant was discharged not due to lack of ability but because she was unwilling to follow the reasonable and work-related directives that had been repeatedly given to her by her employer. Misconduct on the part of the claimant was volitional and within her control.

For the reasons stated herein, the administrative law judge concludes that the employer has sustained its burden of proof in showing that the claimant's discharge took place under disqualifying conditions. Accordingly, unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

DECISION:

The representative's decision dated April 7, 2015, reference 01, is affirmed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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