

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LESLIE W HARDING

Claimant

APPEAL NO. 10A-UI-00342-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BREMER COUNTY AUDITOR

Employer

Original Claim: 12/06/09

Claimant: Appellant (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's December 31, 2009 decision (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. A telephone hearing was held on April 27, 2010. The claimant participated in the hearing with her attorney, Steven Norby. Brian Baker testified on the claimant's behalf. Patrick Smith, attorney at law, represented the employer. Judy Stevenson, the director of human resources; Mike Issacson, the Bremer County Director of Community Based Services; Nate Koehler, the Bremer County Director of Information Technology; and Susan Lahr, the claimant's supervisor, appeared on the employer's behalf. During the hearing, Employer Exhibits 1 through 12 were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on July 7, 2008. The claimant worked full-time as a quality assurance specialist for Community Based Services. Lahr supervised the claimant.

The claimant did not get along with one of the program directors, M.V. M.V. did not supervise the claimant, but the claimant reviewed reports from M.V.'s staff. Problems between the claimant and M.V. got to the point where the claimant wanted to block emails M.V. could send to the claimant. Lahr would not allow the claimant to block emails from M.V., but agreed the claimant could forward emails she received from M.V. to her. The claimant felt M.V.'s emails were offensive.

On November 10, 2009, Lahr contacted Koehler about an odd email she had received. Koehler received permission to access CBS employees' email accounts. He discovered that the

account of three employees, Lahr, M.V., and M.D., were set up to automatically forward any email they received to a @myway.com account. (Employer Exhibit 7.)

In early December 2009, Lahr contacted Koehler again about some suspicious emails she received that day. These emails had been sent through the Bremer County server so Koehler could review the secure gateway log. He found that lharding had logged onto the Bremer County's server on 1:11 a.m. From the same IP address, mvoigt logged onto the same computer at 1:17 am. and then sent emails from mvoigt's email account to the claimant's personal home email account and her work email account. (Employer Exhibit 10.) Koehler concluded the IP address was for someone who lived in the Shell Rock or Castlewood area.

The employer concluded the claimant somehow obtained M.V.'s password so she could get into her email account through the Bremer County's computer system. Based on information the claimant seemed to have knowledge about that she would not normally know about or receive, the employer concluded that the claimant "hacked" into the Bremer County's computer system and could obtain emails that Lahr, M.V., and M.D. received. The employer discharged the claimant on December 7, for violating the employer's Internet policy by getting into some employees' email accounts and then forwarding emails they received to herself. (Employer Exhibits 2, 3, 4, 5).

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant denied using the Bremer County computer system to access emails from Lahr, M.V., or M.D.'s accounts. She asserted someone had been parked outside her home the morning of December 2, 2009, between 1:00 and 1:30 a.m., accessed her Internet connection and knew both her password and M.V.'s password to get into the Bremer County computer system and then had email M.V. received forwarded to the claimant's accounts. Given the fact the IP address was for the Shell Rock or Castlewood area, which was the claimant's residence but not MV's residence, and the absurdity of the claimant's explanation that someone accessed her wireless connection between 1:00 and 1:30 a.m. on December 2, a preponderance of the evidence established the claimant knowingly accessed another employee's email account and the forwarded emails from that account to the her account. The administrative law judge

recognizes that an IP address may not be 100 percent accurate, but even Baker testified a geographic area can usually be ascertained from an IP address.

Could the employer have suspended the claimant to search her personal computers to obtain more concrete evidence? Could the employer have had M.V. testify or even searched her personal computer? Yes. But this did not happen. The employer did not establish beyond a reasonable doubt that the claimant “hacked” into the Bremer County computer system. Lahr may even have been biased about the claimant’s involvement because of the history between the claimant and M.V., but a preponderance of the evidence still establishes the claimant “hacked” into the Bremer County computer system and forwarded emails M.V. received to the claimant. Koehler investigated the problem and did not know anyone who may have been involved. A preponderance of the evidence establishes the claimant breached Bremer County’s computer system by signing on as MV and then forwarding MV’s emails to herself. The claimant’s actions amount to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from her. The employer discharged the claimant for reasons constituting work-connected misconduct. As of December 6, 2009, the claimant is not qualified to receive benefits.

DECISION:

The representative’s December 31, 2009 decision (reference 01) is affirmed. The employer established by a preponderance of the credible evidence that the claimant was discharged for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of December 6, 2009. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer’s account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw