

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CRISTY A NOREM**  
Claimant

**APPEAL NO. 07A-UI-00437-M**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CHARLEY BROWN COMMUNITY DAY  
CARE CENTER INC**  
Employer

**OC: 12/10/06 R: 02  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated January 4, 2007, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on March 20, 2007 at Mason City. Claimant participated personally and was represented by Brian Miller, Attorney at Law. Employer participated by Rolf Aronsen, Attorney at Law with witnesses Liz Austin, Executive Director, Kristin Sheriff, President Board Of Directors, Emily Willemsen, Staff, Ashley Balk, Staff and Julia Kulkova, Staff. Exhibits A through H were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for the employer December 12, 2006.

Employer discharged claimant on December 12, 2006 because claimant used a business computer during work hours for personal use. Claimant was also discharged because she repeatedly lied about personal use of a business computer. Claimant used two business computers. Both computers had evidence of personal use for visiting non-work-related web pages. Claimant had been questioned by her supervisor over personal use of the work computers November 7, 2006, December 5, 2006 and December 8, 2006. Claimant was told that such personal use was inappropriate. The Internet service was turned off December 7, 2006. Claimant indicated to employer that she was not using the Internet service. Claimant was not specifically warned that she would be discharged for such use. Employer discharged claimant for lying about the personal use of the computer. Claimant did use the computer for personal use prior to December 8, 2006. Claimant lied to employer about personal use of the computer December 8, 2006. Claimant did not use the computer for personal use after December 7, 2006. Claimant did not lie to the employer after December 8, 2006.

## REASONING AND CONCLUSIONS OF LAW:

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge holds that the evidence has not established that claimant was discharged for an act of misconduct when claimant violated the employer's policy concerning dishonesty and personal use of the computer. Claimant was warned concerning this policy.

The last incident, which brought about the discharge fails to constitute misconduct because there is no current incident of misconduct. The last warning was December 8, 2006. There was no personal use after December 8, 2006. Furthermore there was no dishonesty after that final warning. A current incident of misconduct must be shown after the final warning. Since

December 8, 2006 was a warning there can be no current incident of misconduct. Therefore, claimant was not discharged for an act of misconduct and as such, is not disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated January 4, 2007, reference 01, is affirmed. Unemployment insurance benefits shall be allowed, provided claimant is otherwise eligible.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

mdm/pjs