

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ALLISON L GRABER
Claimant

THE VGM GROUP INC
Employer

APPEAL 14A-UI-07920-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/29/14
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 24, 2014, (reference 02) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on August 25, 2014. Claimant participated. Employer participated through human resource manager Nancy Demro and supervisor, operations manager Shanon (Hardy) Eckhardt. Employer's Exhibits 1 through 7 were received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a patient care coordinator from March 3, 2014, and was separated from employment on July 1, 2014. The employer discharged her because of continued excessive personal use of e-mail after warning. Others were disciplined but not fired because of their degree of involvement and place in the progressive disciplinary system. The employer discovered the personal use when reviewing her e-mail for business needs when she was absent. The employer notified her upon hire of its policy prohibiting more than a few personal e-mails per day and that she has no expectation of privacy with its use. (Employer's Exhibit 2) On March 19, 2014, supervisor Amanda Bovy issued a coach and counsel report indicating she is distracted with personal topics while at work during training. (Employer's Exhibit 3) In a disciplinary issues report on April 23, 2014, Bovy and (Hardy) Eckhardt warned her of excessive personal use of the employer's e-mail system. They calculated 79 percent of her e-mail use was personal. They also reminded her of a verbal communication that she had behaved unprofessionally towards a supervisor by speaking negatively about her with coworkers and she was not receptive of constructive criticism. (Employer's Exhibits 4 and 7) Most recently, 36 percent of claimant's e-mails at work were personal (86 of 241 e-mails over two weeks, an

average of 15 per day). Because of that, at least in part, the amount of work accomplished was less than reasonably expected. Claimant had non-designated break times; two per day before and after lunch during her 8 a.m. to 5 p.m. shift. The employer allowed a brief correspondence, not a long e-mail conversation chain, with Samantha about going to break or lunch.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The employer has presented substantial and credible evidence that claimant continued excessive personal use of company e-mail after having been warned. This is evidence of deliberate conduct in violation of company policy, procedure, or prior warning. The employer's limitation was not unduly burdensome or unreasonable. Benefits are denied.

DECISION:

The July 24, 2014, (reference 02) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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