

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELANIE L HULLINGER
Claimant

APPEAL NO. 09A-UI-14740-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAN METER INDUSTRIAL INC
Employer

**Original Claim: 09/06/09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Melanie Hullinger (claimant) appealed a representative's September 25, 2009 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Van Meter Industrial (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 29, 2009. The claimant participated personally. The employer participated by Jessica Tesar, Benefits Manager. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on June 9, 2003, as a full-time customer service representative. The claimant signed for receipt of the employer's handbook. The claimant signed for receipt of the Computer Use and Permission Policy on June 9, 2003. The employer's policy prohibits transmitting obscene messages by the company's e-mail. The employer issued the claimant a written warning on May 15, 2009, for performance issues. The claimant refused to sign for receipt of the warning. The employer notified the claimant that further infractions could result in termination from employment.

A worker complained that the claimant was sending obscene messages. The employer investigated and found that the claimant sent at least four e-mails of a sexual nature to co-workers. The employer noticed that the employees who received the messages from the claimant deleted them without forwarding. The employer terminated the claimant on September 4, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. She failed to follow the employer's instructions regarding performance issues, signing for receipt of a warning, and sending obscene e-mails to co-workers. The claimant's disregard of the employer's interests is misconduct. As such, the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's September 25, 2009 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw