

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAUN NEEDHAM
Claimant

APPEAL NO. 07A-UI-00169-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PELLA CORPORATION
Employer

**OC: 12-03-06 R: 02
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge/Misconduct
Section 96.3-7 - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 26, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on January 23, 2007. The claimant did participate along. The employer did participate through Bill Lehner, Human Resources Representative; Craig Meyer, Maintenance Planner/Scheduler; Dean Rennich, Senior Engineer; and Travis Gray, Human Resources Manager; and was represented by Richard Carter of TALX UC eXpress. Employer's Exhibits One and Two were entered and received.

ISSUE:

Was the claimant discharged for work related misconduct?

Has the claimant been overpaid unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as an engineering support technician full time beginning June 8, 1998 through November 17, 2006, when he was discharged.

The claimant was discharged when the employer discovered that he was using the internet to view pornographic websites and was using the internet excessively during work hours. Employer's Exhibit 2 details the claimant's internet usage for November 12, 13 and 14 and show that the claimant used the internet for his own personal use 77, 74 and 165 minutes respectively. The claimant had been given a copy of the employer's handbook and policy book, which prohibits use of the internet on company time. The claimant was allowed to use the internet during his breaks and the employer did not consider the claimant's break time and lunch time when adding up his internet usage. The claimant's was viewing websites that showed scantily clad women, which some employees, if subjected to seeing the picture, could have found objectionable.

When he was questioned about the websites visited as logged by the IT department the claimant admitted that he had visited many of them listed. There was no work reason for the claimant to visit the "hottie-of-the-day" website, or break.com website.

The claimant has received unemployment benefits since filing a claim with an effective date of December 3, 2006.

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 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 claimant was spending excessive time on the internet in contravention of the employer's policy. Additionally, the claimant was visiting some prohibited websites. The claimant's actions, that is excessive time on the internet constitutes disqualifying misconduct. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department

in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The December 26, 2006, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,880.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw