

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD J BEYER
Claimant

APPEAL NO. 07A-UI-09864-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES AREA COMM COLLEGE
Employer

**OC: 09/23/07 R: 01
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Richard Beyer filed an appeal from a representative's decision dated October 17, 2007, reference 01, which denied benefits based on his separation from Des Moines Area Community College (DMACC). After due notice was issued, a hearing was held by telephone on November 7, 2007. Mr. Beyer participated personally. The employer opted not to participate in the hearing.

ISSUE:

At issue in this matter is whether Mr. Beyer was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Beyer was employed by DMACC from September 5, 1995 until September 28, 2007 as a full-time custodian. On or about September 28, he was given the option of resigning or being discharged. The employer intended to discharge him because he had visited inappropriate websites on the work computer. He did not know he was violating the employer's standards or policies. Mr. Beyer had not been disciplined for any matters during the course of his employment.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Beyer was discharged because he visited inappropriate websites on his work computer. The employer failed to provide a copy of the work rules governing use of the work computer. The employer did not provide any acknowledgement signed by Mr. Beyer indicating he was aware of the rules regarding computer usage.

The administrative law judge does not doubt but that Mr. Beyer used poor judgment in accessing inappropriate web sites. However, the evidence failed to establish that he knew the rules and deliberately disregarded them. Isolated instances of poor judgment are not sufficient to establish disqualifying misconduct. The employer has failed to satisfy its burden of proving that Mr. Beyer should be disqualified from receiving benefits. As such, benefits are allowed.

DECISION:

The representative's decision dated October 17, 2007, reference 01, is hereby reversed. Mr. Beyer was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css