

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL C STEELE
Claimant

APPEAL NO. 09A-UI-10999-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TITAN TIRE CORPORATION
Employer

**Original Claim: 06/28/09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 24, 2009, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on August 19, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Josh Turner. Joyce Kain participated in the hearing on behalf of the employer with a witness, Eric Bartlow. Exhibits One, Two, and A were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full-time for the employer as a designer from November 27, 2006, to June 26, 2009. The claimant was informed and understood that under the employer's work rules, he was required to use the company-provided computer and internet access in a professional and courteous manner and using the computer to access pornographic or for any other non-business purpose was prohibited.

The claimant tried accessing adult-content websites using his work computer on June 26, 2009. The employer has installed internet filtering software that blocks employees from accessing improper websites and records when employees try accessing inappropriate sites.

A report was generated showing multiple blocked adults sites accessed on the claimant's computer on June 26, 2009. This was due to the claimant accessing adult websites, not malware. As a result, the claimant was discharged on June 26, 2009.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. The claimant's testimony that he never accessed any sexually-oriented websites and that the blocked sites were the result of some spontaneous malware activity is not credible. The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated July 24, 2009, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw