

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LOLA M MONTGOMERY
Claimant

APPEAL NO. 07A-UI-06153-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE CBE GROUP INC
Employer

**OC: 05/27/07 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Lola M. Montgomery (claimant) appealed a representative's June 18, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of The CBE Group, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 5, 2007. The claimant participated in the hearing with her attorney, Terra Wood. Carrie O'Brien, Mary Phillips, and Natalie Wissink appeared on the employer's behalf. During the hearing Employer Exhibits One, Two, and Three were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 19, 2006. The claimant worked full-time in the litigation department until the last week of her employment. The claimant requested part-time work so she could take a class to work for another employer full time. O'Brien supervised the claimant since December 2006 and accommodated the claimant's part-time request, which she began the last week of her employment.

After the claimant requested part-time work, the employer noticed her productivity decreased. (The employer took into consideration the claimant's part-time status.) The employer then started monitoring the claimant to find out why she not working as efficiently as she had before.

On May 22 and 23, Wissink shadowed the claimant and discovered the claimant took a personality test on the Internet. The claimant also reviewed Canada's extraditions laws on the Internet. Neither the personality test nor the Canadian law had anything to do with the claimant's work. On May 24, the employer gave the claimant a written warning. The warning informed the claimant she was not allowed to use the Internet at work for non-work-related

reasons. The employer also gave the claimant a minimum number of accounts she must work on a daily basis. (Employer Exhibit One.)

The next work day, May 29, the employer again monitored the claimant's Internet usage. The employer discovered the claimant typed in a name on an Internet program the employer pays to use, Accurint. The name the claimant typed in on this service, including her own name, were not people that had a debt with the employer. The employer concluded the claimant again violated the employer's Internet policy by using the employer's Internet for non-work-related purposes.

On May 30, 2007, the employer discharged the claimant for continued violations of the employer's Internet policy. During her employment, the claimant received training regarding the employer's Internet policy. In late June 2006, the employer informed the claimant she could only use the Internet at work for work-related purposes. Employees are not allowed to remain at their desk during a break so that they are not tempted to use the Internet while on break.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew or should have known the employer did not allow employees to use the employer's Internet at work for non-work-related reasons at any time. The employer gave the claimant a warning on May 24 for violating the employer's Internet policy. The next workday, the claimant used an Internet program by typing in a name of a person, including her own name, who did not owe the employer any money. The claimant's explanation that the program brought up variations of names she typed in is not supported by the evidence. If the names the claimant typed in to search on May 29 had been a derivation of a person who owed the employer money, the evidence should reveal the derivation. The evidence does not support the claimant's assertion. The claimant's mere allegation, in conjunction with the employer's credible testimony that the claimant typed in the name, does not support the claimant's testimony. The fact the claimant typed in names on a search program that had nothing to do with her work, may appear to be insignificant, but the claimant had just been warned that she could not use the employer's Internet for any non-work-related purpose. On May 29, 2007, the claimant intentionally typed in names of people to search for non-work-related purposes. This action amounts to an intentional

and substantial disregard of the behavior the employer has a right to expect from an employee just after the employer warned her about her inappropriate Internet usage. The employer discharged the claimant for reasons constituting work-connected misconduct. As of May 27, 2007, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's June 18, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of May 27, 2007. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw