IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

MARK A PIPER
2119 NW 159TH ST APT 43
CLIVE IA 50325

IOWA HEALTH SYSTEM
C/O SARA VOTROUBEK
118 – 2ND ST SE #300
CEDAR RAPIDS IA 52401-1217

Appeal Number: 04O-UI-06096-DWT
OC 01/25/04 R 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Mark A. Piper (claimant) appealed a representative's February 19, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Iowa Health System (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 before another administrative law judge on March 10, 2004. The administrative law judge affirmed the decision on March 18, 2004. The claimant appealed the decision to the Employment Appeal Board. In an attempt to review the testimony presented during the March 10 hearing, the Employment Appeal Board discovered the second side of the hearing tape was blank. Although the Employment Appeal Board remanded this matter for the limited purpose of completing the record, (the employer's and claimant's testimony was recorded, but any questions the employer had asked the claimant after he completed his testimony were not recorded) but the Appeals Section scheduled another hearing instead of supplementing the record.

Another telephone hearing was scheduled on June 22, 2004. The claimant and Nikki Barvincak, the employer's manager, again participated in the hearing. 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 May 15, 2003. He worked as a full-time supervisor in the central billing department. Barvincak was the claimant's supervisor.

The employer's written policy informs employees they are not to use the employer's email system for personal reasons. On July 24, 2003, the employer gave the claimant a written warning for sending emails to a co-worker that were not business related. A co-worker, R.A., complained about the personal tone of the email the claimant sent to her. The employer's written warning told the claimant that if he again used the employer's email system to send a personal and/or inappropriate email to anyone, he would be discharged.

On December 15 and 19, the claimant knew R.A. better. The two exchanged a series of personal comments through the employer's email system. The claimant considered the emails exchanged between he and R.A. was the equivalent to talking to one another about personal issues during a break. R.A. did not report the exchange of emails she and the claimant had until January 22, 2004.

On January 15, the claimant and H.R., a co-worker and friend of R.A., exchanged a series of personal comments through the employer's email system. After H.R. or R.A. became upset with the claimant, H.R. and R.A. reported on January 22, 2004 that the claimant had sent comments to them of a personal nature through the employer's email system. The claimant did not supervise either R.A. or H.R. They both worked in another department. The claimant did not socialize with either R.A. or H.R. outside of work.

On January 22, 2004, the employer discharged the claimant for again using the employer's email system for personal use.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. 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).

As of July 24, 2003, the claimant knew his job was in jeopardy if he again used the employer's email system to send messages to co-workers that were not work related. On December 17 and 19, 2003, and January 15, 2004 the claimant sent personal email comments to two employees at work. The claimant considered these employees friends even though he did not socialize with them outside of work. The personal comments exchanged between the claimant and the two employees were not offensive. The claimant, however, knew the employer would discharge him if he used the employer's email system for personal reasons. The fact the claimant engaged in exchanging personal comments to two employees at least three times after he received the July 24 warning indicates he intentionally violated the employer's rules that employees could not use the employer's email for personal reasons. Even though the time involved typing the email message was not significant, the claimant's conduct amounts to an intentional and substantial disregard of the standard of behavior the employer had a right to expect from him. As a supervisor, the employer had the right to expect the claimant to uphold all of the employer's rules. In this case, the claimant did not follow the rules even though the employer warned him he would be discharged if he again violated the employer's email policy. As of January 25, 2004, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's February 19, 2004 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 January 25, 2004. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/b