

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARA K KOELLER
Claimant

APPEAL NO. 09A-UI-05446-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN TRUST & SAVINGS BANK
Employer

OC: 03/01/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 25, 2009, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on May 4, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Natalia Blaskovich, attorney at law. Arthur Gilloon participated in the hearing on behalf of the employer with witnesses, Chuck Seymour, Gary McAndrew, Kurt Wedewer, and Sue Redding. Exhibits One through Ten were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a client communication specialist for the employer from July 2006 to March 5, 2009. She was informed and understood that under the employer's work rules, all computers were to be used solely for business purposes. Despite this policy, the employer in practice allowed all employees to use their computers for personal business on a limited basis even during work hours as long as the use was not excessive.

On September 7, 2007, the claimant and other employees were warned that internet activity was being monitored very closely and Facebook was being blocked because the claimant and several other employees used their computers to excessively access the Facebook social networking site.

On December 15, 2008, the claimant was warned about her excessive personal use of the internet for non-business purposes. She was informed by her supervisor that such excessive use would not be tolerated and she needed to be smart about her use of her computer.

Despite this warning, the claimant continued to regularly use her computer to access the internet for personal non-business purposes for substantial periods during her workday. After employees complained that the claimant was wasting time accessing the internet for personal

business in late February 2009, the employer investigated her internet usage. It was discovered the claimant had violated the employer's work rules and the warnings she had been given by spending substantial time each day accessing the internet for personal use, including ordering personal products online, checking her bank accounting, investigating and filing complaints about missing contact lenses, accessing recipe and diet websites, and sites for her college attendance.

As a result of this investigation, the employer discharged the claimant on March 5, 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 section 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 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 March 25, 2009, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs