

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRETT M RAPIEN

Claimant

APPEAL NO. 09A-UI-02767-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MUNICIPAL PIPE TOOL COMPANY INC

Employer

Original Claim: 12-28-08

Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 13, 2009, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on March 17, 2009. The claimant did participate along with his witness, Trisha Rapien, his wife. The employer did participate through Sharon Waschkat, Chief Financial Officer, and (representative) Brian Latusick, Human Resources Manager.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as an assistant controller, full-time, beginning February 18, 2008, through December 24, 2008, when he was discharged. The claimant worked for both Nutri-Ject Systems and Municipal Pipe Tool Company as the assistant controller. He worked out of the same office but split his hours on the payroll. When he was hired in February 2008 the claimant told the employer that he was going to move to Missouri and would only be staying until he could arrange for his family to move and locate other employment. The employer hired the claimant knowing that he would not stay in the job for long. The claimant stayed in Iowa to work after his family moved to Missouri in June and would go to Missouri only every other weekend.

On December 24 Mr. Latusick called the claimant and during a conversation that was overheard by the claimant's wife on a speaker phone, Mr. Latusick told the claimant he was being laid off because the employer thought the commute was getting to be too much for him, and that this way they both could move on with the claimant finding a new job and the employer hiring a replacement. The claimant had not received any verbal or written warnings that his job was in jeopardy or that there was any behavior he needed to modify or change in order to maintain his employment.

At the fact-finding interview, the employer alleged that the claimant was fired for spending too much personal time on the internet and for not completing assigned job duties. The claimant was never personally warned about his internet usage and it was common for employees to use the internet during the work day, not just during their breaks.

The employer also alleged that the claimant did not complete work duties, including pulling purchase orders and matching them with invoices and the making sure that the accounts payable clerk paid the bills. The employer left a post note on a file with no deadline information asking the claimant to complete the task. The employer's only follow up was to ask if the claimant got her note. The claimant was never given a deadline by which to complete the task.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants

denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The claimant did not fail to complete any task by any deadline given to him, as he was not given any deadlines. His use of the internet for personal business was merely an isolated incident of poor judgment and inasmuch as employer had not previously warned claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are allowed.

DECISION:

The February 13, 2009, reference 02, decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw